

2487
No. 11693

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

C. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.
Respondents.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, A.F.L., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, A.F.L.,
Intervenors.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 336

Upon Petition for Enforcement of an Order of the
National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

G. W. HUME and CALIFORNIA PROCESSORS
& GROWERS, INC.

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Acting Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board, Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of G. W. Hume Company and California Processors & Growers, Inc. and Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the Contract," the same being known as Case No. 20-C-1391 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated April 10, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Myers on April 10 and 11, 1946, together with all exhibits introduced in evidence.

(3) Copy of fifth amended charge filed by the union April 22, 1946.

(4) Copy of Board Attorney's motion to reopen the record, dated April 24, 1946.

(5) Copy of Trial Examiner Ringer's order to show cause, dated April 26, 1946.

(6) Copy of company's telegram, dated May 1, 1946, objecting to the motion to reopen the record.

(7) Copy of union's telegram, dated May 4, 1946, objecting to the motion to reopen the record.

(8) Copy of order denying motion to reopen the record, dated May 6, 1946.

(9) Copy of Trial Examiner Myers' Intermediate Report, dated May 20, 1946, annexed to item 16 hereof; copy of order transferring case to the Board, dated May 24, 1946, together with copy of affidavit of service thereof.

(10) Copy of company's telegram, dated June 5, 1946, requesting extension of time to file exceptions.

(11) Copy of Board's telegrams, dated June 7, 1946, granting all parties extension of time to file exceptions and briefs.

(12) Copy of A. F. of L's exceptions to the Intermediate Report.

(13) Copy of A. F. of L's letter, dated July 8, 1946, requesting oral arguments before the Board.

(14) Copy of notices of hearing for the purpose of oral argument, dated September 17, 1946.

(15) Copy of list of appearances at oral argument held before the Board on October 1, 1946.

(16) Copy of decision and order issued by the National Labor Relations Board on October 31, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Acting Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 18th day of July 1947.

[Seal] /s/ CLARA M. MARTIN,
Acting Chief, Order Section

BOARD'S EXHIBIT NO. 1(a)

United States of America, Before the National
Labor Relations Board, Twentieth Region

Case No. 20-C-1391

In the Matter of—

G. W. HUME and CALIFORNIA PROCESSORS
& GROWERS, INC.

and

FOOD, TOBACCO, AGRICULTURAL AND
ALLIED WORKERS UNION OF
AMERICA, C.I.O.

FOURTH AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that G. W. Hume Company and California Processors & Growers, Inc., at Turlock, California, employing 50 workers in fruit and vegetable canning has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about November 21, 1945 said company, by its officers, agents and employees, discharged the persons named in the list attached hereto marked "Exhibit A" and ever since has refused to reinstate them solely because of their membership in and activities in behalf of FTA-CIO.

On or about March 25, 1946 said Company granted exclusive recognition to, and renewed or executed a closed-shop collective bargaining agreement with a local of the Teamsters Union (A. F. of L.). At that time FTA-CIO represented a majority of the workers at the plant and there was a question of representation pending and unresolved before the National Labor Relations Board, of which the Company had notice and in which it had participated through its agents.

Since said date, the Company has given effect to the closed-shop provisions of said contract and has required membership in the said Teamsters' Local as a condition of employment.

By the acts set forth above and by granting access to its plant to representatives of said Teamsters' Local, by other acts of preference and assistance and by other acts and statements, said Company by its officers, agents and employees has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affili-

ation of organization, and name and official position of the person acting for the organization.)

FOOD, TOBACCO, AGRICULTURAL &
ALLIED WORKERS UNION OF
AMERICA, C.I.O.

150 Golden Gate Ave., San Francisco, Cal.
Telephone: ORdway 9253

/s/ LUISA MORENO.

Subscribed and sworn to before me this 26th day
of March, 1946 at San Francisco, California.

/s/ JOHN PAUL JENNINGS,
Regional Attorney, NLRB.

“Exhibit A”

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Clarence McVay
H. F. Frazier	Ruth Waite
Harlie Frischneckt	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

[Endorsed]: Filed March 26, 1946.

BOARD'S EXHIBIT NO. 1(b)

[Title of Board and Cause.]

COMPLAINT

It having been charged by the Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., that G. W. Hume Company, Turlock, California, and California Processors & Growers, Inc., hereinafter called respondent cannery and respondent association, respectively, have engaged in, and are now engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

The respondent cannery is a California corporation operating a plant at Turlock, California, herein called the Turlock plant, where it is engaged in the canning and processing of fruits and vegetables. Respondent cannery in the course and conduct of its business, causes, at all times herein alleged continuously has caused in excess of 62 percent of the products of its Turlock, California plant valued at in excess of \$1,900,000 annually, to be sold and transported in interstate and foreign commerce

from its Turlock plant to states and territories of the United States other than the State of California and to foreign countries.

II.

Respondent association is, and at all times since December 18, 1936, has been, a corporation organized under and existing by virtue of the laws of the state of California, having its principal office and place of business in the City and County of San Francisco, State of California. Respondent association is a non-profit corporation formed for the following purposes:

(a) The promotion of friendly relations and co-operation between the members of respondent association and their employees; the recognition of the principle that every person who wishes to work has the right to work; the recognition and protection of the right of every person to seek, secure and retain work for which he is fitted; the recognition and protection of the right of the members of respondent association to choose their employees; the encouragement of industry, efficiency and safety between employer and employee alike; the recognition and protection of the right of employees of members of respondent association to be free from coercion, duress or intimidation from any source;

(b) The ascertainment of facts pertaining to fair and reasonable wages, hours and other working conditions among the members of respondent association and their competitors in this and other parts of the United States;

(c) The dissemination of the information so obtained:

(d) The representation, when requested, of members of respondent association in their respective labor relations with their employees, and with any governmental regulatory, advisory or arbitration commission, board of body, which may have jurisdiction thereof, and of controversies arising therefrom;

(e) The use of any and all lawful means to attain the enforcement of all agreements entered into between the members of respondent association and their respective employees; the prevention of any breach of any such agreements, either by employer or employee, and the giving of assistance to the injured party in the event of any such breach; and

(f) In general to advise and confer with the members in matters pertaining to their employer-employee relations.

Respondent association is, and continuously at all times hereinafter mentioned has been, engaged in promoting and furthering the aforesaid purposes in the interests of the employers, including respondent cannery, which are members of respondent association.

Members of respondent association are a large number, to-wit, sixty-one, of the cannery operators engaged in the California canning industry, constituting nearly all the cannery operators engaged in said industry in Northern and Central California.

III.

Respondent association, by virtue of the facts alleged in paragraph II hereof, is an employer within the meaning of Section 2, subdivisions (1) and (2) of the National Labor Relations Act, the activities of which bear the same relation to interstate and foreign commerce as the activities of the employers in the interests of which said respondent association acts.

IV.

The respondents while engaged in their business as described above, by their officers, agents, and employees have since approximately August 1, 1945, interfered with, restrained, and coerced their employees at the Turlock plant in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements including without limitation the following:

(a) The respondents have urged, persuaded, and warned their employees not to become or remain members of F.T.A.-C.I.O., and have demanded that they become and remain members of the A. F. of L., that they pay dues, fees, and assessments to the A. F. of L., and have threatened said employees with discharge if they should refuse to do so.

(b) The respondents have granted to representatives of the A. F. of L. access to the Turlock plant and have otherwise assisted the A. F. of L., and have at the same time, refused access to said plant to representatives of the F.T.A.-C.I.O.

(c) Respondents have required said employees at the Turlock plant to obtain clearance cards from the A. F. of L., and to sign an agreement for the checkoff of their dues in the A. F. of L., as a condition of employment, and have refused to employ or continue in its employ, persons who failed or refused to obtain such clearance and to sign such check-off authorizations.

V.

Respondents by their officers, agents, and employees on or about November 21, 1945, discharged the employees listed in Exhibit "A"; on or about November 26, 1945, discharged Harlie Frischneckt, and on or about December 7, 1945, discharged Clarence McVay.

VI.

Respondents by their officers, agents, and employees ever since the dates alleged in paragraph V have refused and still refuse to reinstate any of the employees referred to in said paragraph, except that respondents reemployed some of said employees on or about February 7, 1946.

VII.

Respondents discharged and refused, and still refuse, to reinstate said employees named above, because of their membership in and activities on behalf of F.T.A.-C.I.O., and because of their refusal to become or remain members of the A. F. of L., to pay dues and assessments to the A. F. of L., and to sign an authorization for a checkoff of their A. F. of L. dues.

VIII.

Following a hearing conducted in the Matter of Bercut Richards Packing Company, et al., Cases Nos. 20-R-1414, et al, the Board, on October 5, 1945, directed that a collective bargaining election be held among the employees of the members of the respondent association, including employees of the respondent cannery.

Pursuant to said Direction of Election, an election was conducted among the employees of the respondent cannery on or about October 17, 1945. Thereafter and on or about February 15, 1946, the Board issued its Supplemental Decision and Order in which it directed that the election held should be set aside and that a new election should be conducted.

IX.

On or about March 25, 1946, while said question of representation was still pending and unresolved before the Board, respondent cannery executed an agreement with the A. F. of L., recognizing the A. F. of L. as the exclusive representative of its employees at its Turlock plant for the purposes of collective bargaining with the respondent cannery and requiring as a condition of employment, membership in the A. F. of L. The respondent cannery since said date has enforced and given effect to said contract. At the time said contract was executed, the respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the respondents knew fur-

ther that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A.F. of L.

X.

By reason of the matters alleged in paragraphs IV through IX, above, the said collective bargaining agreement referred to in paragraph IX is illegal and void.

XI.

By all of the acts of respondents as set forth and described in paragraphs IV through IX, above, and by each of said acts, respondents interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and by each of them respondents have engaged in, and are now engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

XII.

By all of the acts of the respondents as set forth and described in paragraphs V through IX, by negotiating the contract referred to in paragraph IX, by granting exclusive recognition to the A. F. of L., and by administering and enforcing said contract, respondents discriminated, and are now discriminating in regard to hire or tenure of employment against their employees and thus discouraged, and

are now discouraging membership in the F.T.A.-C.I.O., and thus encouraged and are now encouraging membership in the A. F. of L., and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

XIII.

The activities of the respondents as set forth, and described in paragraphs IV through XII, above, occurring in connection with the operations of respondents as described in paragraphs I, II, and III, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and territories of the United States and with foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV.

The aforesaid acts of respondent, as set forth in paragraphs IV through XII, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 27th day of March, 1946, issues its Complaint against G. W. Hume Company and California Processors & Growers, Inc., respondents herein.

[Seal] /s/ JOSEPH E. WATSON,

Regional Director, National Labor Relations Board,
Twentieth Region.

Appendix A

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Ruth Waite
H. F. Frazier	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

BOARD'S EXHIBIT No. 1(c)

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 10th day of April, 1946, at 10 o'clock in the forenoon in Room 305, Old Courthouse Building, Modesto, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of

Hearing, to be signed by the Regional Director for the Twentieth Region on this 27th day of March, 1946.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National
Labor Relations Board.

BOARD'S EXHIBIT No. 1(d)

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE OF NOTICE OF
HEARING AND COMPLAINT

Date of Mailing 3/27/46.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled documents by postpaid registered mail upon the following persons, addressed to them at the following addresses:

California Processors & Growers, Inc.
Financial Center Building, Oakland, California.
Registry No. 915548. Date of Delivery: 3-28-46.

G. W. Hume Company, Turlock, California.
Registry No. 915549. Date of delivery: 3-28-46.

Food, Tobacco, Agricultural & Allied Workers
Union of America, C.I.O., 150 Golden Gate
Avenue, San Francisco, California.
Registry No. 91550. Date of delivery: 3-28-46.

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, A. F. of L.,
c/o Mr. Mathew O. Tobriner, 1035 Russ Building,
San Francisco 4, California.
Registry No. 915551. Date of delivery: 3-28-46.

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America, A. F. of L.
846 South Union, Los Angeles, California.
Att'n.: Mr. Einar Mohn. Registry No. 915552.
Date del.: 3-29-46.

California State Council of Cannery Unions,
A. F. of L.,
1916 Boadway, Oakland 12, California.
Registry No. 915553. Date of delivery: 3-28-46.

/s/ BERNICE E. OLSON.

Subscribed and sworn to before me this 1st day
of April, 1946.

[Seal] /s/ ELLA P. ELLIOTT,
Designated Agent, National Labor Relations Board,
20th Region.

BOARD'S EXHIBIT No. 1(e)

[Title of Board and Cause.]

ANSWER OF G. W. HUME COMPANY AND
CALIFORNIA PROCESSORS AND GROW-
ERS, INC.

Come now the above named G. W. Hume Company and California Processors and Growers, Inc., each for itself, and answering the complaint on file in the above entitled matter, admit, allege and deny as follows:

I.

Admit the allegations contained in paragraphs numbered I and II of said complaint, but in connection with the final paragraph of the allegations contained under II allege that the members of the California Processors and Growers, Inc., do not constitute "nearly all the cannery operators engaged in said industry in Northern and Central California," but do constitute a group of canners processing approximately seventy-five percent of the canned fruit and vegetables pack of the State of California.

II.

Deny that respondents, or either of them, in any manner or form, have interfered with, restrained, or coerced their employees at the Turlock plant in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements, or in any manner whatsoever, including the acts or statements set forth in sub paragraphs a, b and c of paragraph IV of said complaint. In this connection respondents allege that any or all acts or statements made

or done by respondents, or either of them, have been and are in accordance with the provisions of a bona fide collective bargaining agreement, and pursuant to the provisions of the National Labor Relations Act.

III.

Deny each and every, all and singular, the allegations set forth in paragraph VI of said complaint, with the exception of that portion of said paragraph alleging that "respondents reemployed some of said employees on or about February 7, 1946."

IV.

Deny each and every, all and singular, the allegations contained in paragraph VII of said complaint, but in this connection allege that all of the acts and statements of respondents in connection with the discharge or reinstatement of any employees have been and are in accordance with the provisions of a bona fide collective bargaining agreement, and pursuant to the National Labor Relations Act.

V.

Deny that, as alleged in paragraph IX of said complaint, there was or is pending and unresolved before the Board any question of representation which would preclude respondents from dealing collectively with employees within the Turlock plant, or within the unit for members of C. P. & G. plants, as prescribed by the Board, and deny that respondents, or either of them, knew that the Board in its supplemental decision of February 15, 1946, had

expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the FTA-CIO or to the A. F. of L., and in this connection respondents allege that the Board was without authority to make any such express provisions, and that the Board, since February 15, 1946, through its Chairman, has declared that the provisions of its supplemental decision of February 15, 1946, "could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had the power to do in an unfair labor practice proceeding."

VI.

Deny the conclusion set forth in paragraph X of said complaint.

VII.

Deny each and every, all and singular, the allegations and conclusions set forth in paragraphs XI, XII, XIII and XIV of said complaint.

Wherefore, respondents, and each of them, pray that the complaint herein be dismissed, and that all proceedings pursuant thereto be terminated.

G. W. HUME COMPANY and
CALIFORNIA PROCESSORS
AND GROWERS, INC.

By /s/ PAUL ST. SURE and
JAMES R. AGEE,
Their Attorneys.

Dated: April 9, 1946.

BOARD'S EXHIBIT No. 1(f)

[Title of Board and Cause.]

ANSWER

Now come International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., and California State Council of Cannery Unions, A.F.L., hereinafter referred to as A.F.L., and by way of Answer to the Complaint on file herein, allege as follows:

I.

Answering paragraphs I, II, III and VIII of said Complaint, admit the allegations thereof.

II.

Answering paragraphs IV, V, VI and VII of said Complaint, alleges it is unable to answer said allegations in that they are ambiguous, uncertain and unintelligible. It cannot be ascertained therefrom whether or not the Complaint refers to acts rendered in the execution of a collective bargaining agreement which was upheld as valid in the Decision, Direction of Elections and Order of the National Labor Relations Board in the matter of Ber-cut-Richards Packing Company et al. and Cannery and Food Process Workers Council of the Pacific Coast and its Affiliated Unions et al., being cases number 20-R-1414 et al., or whether said allegations refer to acts not committed in pursuance of said contract. It cannot be ascertained therefrom what acts the Complaint refers to or what acts of respond-

ent are intended when it is alleged that "respondent urged, persuaded and warned its employees not to become or remain members of the F.T.A.-C.I.O.," or what acts or conduct is referred to in the allegation that respondent urged that they (the workers) become and remain members of the A.F.L. and pay dues and assessments to it, threatening them with discharge if they failed to do so. It cannot be ascertained when, if ever, said alleged acts occurred. It cannot be ascertained what acts are referred to and when they are alleged to have occurred in the allegation that respondent granted access to its plant to representatives of the A.F.L. and otherwise assisted A.F.L. It cannot be ascertained from paragraphs V, VI, and VII or any of said paragraphs whether or not the alleged discharges and refusals to reinstate were acts rendered in execution of said aforementioned collective bargaining agreement or whether said allegations refer to acts not committed in pursuance of said contract. All of said ambiguities make it impossible for A.F.L. to answer said allegations.

III.

Answering paragraph IX of said Complaint, A.F.L. denies that the Board, in its Supplemental Decision of February 15, 1946, had expressly provided that, while the question of representation was unresolved and pending a new election, respondent should not grant exclusive recognition either to F.T.A.-C.I.O. or the A.F.L., but alleges that the Order in said case did no more than set aside and

annul the election, and made no ruling whatsoever with respect to said exclusive recognition.

Answering the remaining allegations of said paragraph IX, admits that an agreement was executed with A.F.L., but denies the characterization of it in said paragraph. A.F.L. has no information or belief with regard to the matter of whether the respondent knew that a question of representation was pending and on that ground denies that at the time said contract was executed respondent knew that the question of representation of its employees was still pending and unresolved before the Board.

IV.

Answering paragraphs X, XI, XII, XIII and XIV of said Complaint, denies each and every obligation of each and every of said paragraphs.

As a Further, Separate and Distinct Answer Herein, the A.F.L. alleges that it is and has been for many years the duly constituted and exclusive bargaining representative of respondent's employees; that the election previously ordered herein was abortive and illegal and was later set aside by the National Labor Relations Board and therefore did not indicate or result in the selection by respondent's employees of a new or different bargaining representative. That no valid election has yet been held or conducted among said employees, and that until such an election is ordered and held and until a new and different bargaining representative is selected and certified, the A.F.L. is the exclusive bar-

gaining representative of respondent's employees, and respondent is obligated to bargain with the A.F.L. as such exclusive representative.

Wherefore, A.F.L. prays that the Complaint be dismissed.

TOBRINER & LAZARUS,

By /s/ MATHEW O. TOBRINER,
Attorneys for A.F.L.

State of California,
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is the attorney for A.F.L. and makes this verification in its behalf for the reason that none of the officers and said A.F.L. are in the City and County of San Francisco wherein said attorney maintains his offices; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 6th day of April, 1946.

[Seal] /s/ LOUIS WIENER,

Notary Public in and for the City and County of
San Francisco, State of California.

BOARD'S EXHIBIT No. 1(g)

[Title of Board and Cause.]

MOTION TO DISMISS

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., hereinafter referred to as AFL, joined herein as "parties to the contract," hereby appear specially herein for the purpose of this motion and not otherwise, and hereby make and file this motion to dismiss upon the following grounds:

I.

The complaint herein on file, in paragraph IX, page 7, alleges:

"At the time said contract was executed, the respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the respondents knew further that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

In the event that said complaint is correct and said Supplemental Decision of February 15th constitutes an order of the Board, the Board had an appro-

priate remedy other than the filing of this complaint. For the purposes of this specific ground for dismissal of said complaint, it is assumed that said provision constituted an order, although in other and separate grounds for said dismissal we contend that said provision was not an order. In the event that said provision were an order and were legal and enforceable, the United States Circuit Court of Appeals for the Ninth Circuit is the proper tribunal in which the Board should seek enforcement of said order. The Trial Examiner of the Board is not the proper officer or tribunal before whom the issues presented by the complaint herein may be tried and neither said Trial Examiner nor the National Labor Relations Board has any jurisdiction in the premises.

As and for a second and separate and independent ground for said motion to dismiss, said AFL alleges:

I.

The National Labor Relations Board, on or about February 15, 1946, having already "provided" that the respondent company is without right to bargain and contract with the AFL, has by such pronouncement prejudged the present case before trial and is therefore not the proper tribunal before which the matters presented by the complaint herein should be tried. Such "ruling" was made without any prior notice to the parties that the Board would make any determination of the right of the parties to engage in exclusive collective bargaining.

No hearing was held upon said subject matter. No evidence was taken on such subject matter. No charges were filed or complaint issued on such subject matter. The Board attempted to determine such right ex cathedra and ex parte, in violation of the provisions of the National Labor Relations Act. By said unlawful acts the Board has prejudged the instant matter, rendered itself unable to decide said matter impartially and this complaint should therefore be dismissed.

As and for a third and separate and independent ground for said motion to dismiss, said AFL alleges:

I.

In the event that the Supplemental Decision of February 15, 1946, did not "order" said AFL not to bargain exclusively with respondent or in the event that the National Labor Relations Board lacked jurisdiction to provide in said Supplemental Decision that said AFL should not bargain exclusively with said company, the within complaint should be dismissed on the ground that it does not state a cause of action. Unless and until a new bargaining agency is chosen, respondent company is not only permitted but obligated to bargain with and recognize the AFL as the existing bargaining representative of its employees.

Wherefore, AFL moves that the within complaint be dismissed.

TOBRINER & LAZARUS,
By /s/ MATHEW O. TOBRINER,
Attorneys for AFL.

Memorandum of Points and Authorities
in Support of Motion to Dismiss

National Labor Relations Act, Section 10,
subparagraph (e);

National Labor Relations Board v. Botany
Worsted Mills, 133 Fed. (2d) 876, 6 Labor
Cases p. 64, 161;

National Labor Relations Board v. Appala-
chian Electric Power Co., 140 Fed. (2d)
217, 7 Labor Cases p. 65, 670;

National Labor Relations Board v. Whittier
Mills Co., 111 Fed. (2d) 474, 2 Labor Cases
631.

United States of America
Before the National Labor Relations Board
Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED
WORKERS UNION OF AMERICA, C.I.O.,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, A. F. OF L., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, A. F.
OF L.,

Parties to the Contract.

AFL'S EXCEPTIONS TO INTERMEDIATE
REPORT

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. L. of L., and California State Council of Cannery Unions, A. F. of L., hereinafter referred to as "AFL," hereby except to the following findings of the Trial Examiner in the above-entitled case, namely:

“The representation proceeding concerning Hume’s employees together with those of the other members of the Association, having been set in motion, it remains a bar to new collective bargaining contracts containing exclusive recognition between Hume and any labor organization until the entire proceeding has run its course. It was therefore Hume’s obligation under the Act to refuse to deal with any labor organization as the exclusive representative of its employees. The fact that Hume believed AFL to be the majority representative of the employees at the time of the execution of the March 25, 1946, contract is not sufficient. The question of the majority representation was before the Board and it was the Board’s and not Hume’s function to resolve that question. By taking upon itself to determine the question of representation, Hume committed an unfair labor practice by lending prestige to AFL through the process of contracting with it while the employees were making their selection.”

(Intermediate Report, p. 24.)

“By entering into the closed-shop contract of March 25, 1946, Hume created a condition of discrimination in regard to the hire and tenure and terms or conditions of employment of its employees, which had the coercive effect of encouraging membership in Local 22382 and discouraging membership in CIO. It is therefore found that the foregoing conduct of Hume was, in fact, a discrimination in regard to the hire and tenure and terms or

conditions of employment of its employees because it compelled its employees to become and remain members of Local 22382, and, therefore interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.”

(Intermediate Report, p. 26.)

“It is also apparent that the March 25 contract sets up the employees of Hume as a separate appropriate bargaining unit despite the fact that the Board had already found that the employees of the members of the Association constituted the appropriate bargaining unit. In this respect too, the March 25 agreement must fall since it fails to comply with the requirements of the proviso in Section 8(3) of the Act. At the time of the hearing Hume was still a member of the Association.”

(Intermediate Report, p. 26.)

Respectfully submitted,

TOBRINER & LAZARUS,

By /s/ MATHEW O. BRINER,
Attorneys for AFL.

United States of America
Before the National Labor Relations Board

Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.,
and

FOOD, TOBACCO, AGRICULTURAL & ALLIED
WORKERS UNION OF AMERICA, C.I.O.,
and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, A. F. OF L., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, A. F.
OF L.,

Parties to the Contract.

John Paul Jennings, for the Board.

Messrs. Paul St. Sure and James R. Agee, of Oak-
land, Calif., for the respondent.

Messrs. Gladstein, Anderson, Resner, Sawyer &
Edises, by Bertram Edises, of Oakland, Calif., for
the CIO.

Messrs. Tobriner & Lazarus, by Mathew O. To-
briner, of San Francisco, Calif., for the AFL.

Seymour Cohen, of counsel to the Board.

DECISION AND ORDER

On May 20, 1946, Trial Examiner Howard Myers
issued his Intermediate Report in the above-entitled

proceeding, finding that the respondent Hume had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further recommended that the complaint be dismissed as to the respondent Association, and also that it be dismissed without prejudice insofar as it alleges that John M. Smith was discriminatorily discharged. Thereafter the AFL filed exceptions to the Intermediate Report and a supporting brief. On October 1, 1946, the Board at Washington, D.C., heard oral argument in which the respondent Hume, the AFL, and the CIO participated.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications and additions hereinafter set forth.

1. The Trial Examiner found that the respondent Hume entered into a closed-shop contract with the AFL on March 25, 1946, after the Board had determined that there existed a question concerning representation of the employees covered by the con-

tract¹ and after the Board had, in vacating the first election held to resolve the question concerning representation, explicitly reserved to itself the determination of that question.² We have already considered the propriety of such conduct in a companion case, *Matter of Flotill Products, Inc.*, 70 N.L.R.B., No. 12; and, for the reasons therein stated, we conclude that the respondent Hume, by entering into the contract of March 25, 1946, interfered with, restrained and coerced its employees, within the meaning of Section 8(1) of the Act.³ While it is not determinative of the issue before us, it is to be noted as added proof of their unlawful conduct that the parties, by executing the new contract, did more than preserve the status quo. The provisions of this contract are more stringent than the corresponding union security provisions theretofore in effect, as set forth in the Intermediate Report.

The Trial Examiner also found, as an additional ground for invalidating the March 1946 contract, that it covered a unit different from the unit pre-

¹*Matter of Bercut-Richards Packing Company, et al.*, 64 N.L.R.B. 133.

²*Matter of Bercut-Richards Packing Company*, 65 N.L.R.B. 1052, 1057.

³In view of the state of the record and in view of our opinion that we shall effectuate the policies of the Act by our remedial order, we find it unnecessary to determine whether the execution of the contract also violated Section 8(3) of the Act.

viously found appropriate by the Board. In view of our conclusion in the preceding paragraph, we find it unnecessary to pass upon this further issue in the present case.

2. The Trial Examiner found that the respondent Hume discriminatorily discharged 29 employees because of their failure to maintain membership in the AFL. This issue is independent of the representation aspects of the case discussed in paragraph 1, above, and its resolution is determined by well-established principles under Section 8(3) of the Act and the proviso thereto.

The pertinent provisions of the contract in force at the time of the discharges are set forth in the Intermediate Report, and we agree with the Trial Examiner's conclusion that nothing in those provisions required the employees in question to maintain their union membership as a condition of continued employment with the respondent.⁴ We also agree with the Trial Examiner's conclusion that at the time of the discharges the respondents did not regard the contract as requiring maintenance by employees of union membership, whatever oral understanding may have previously existed between

⁴See *N.L.R.B. v. Electric Vacuum Cleaner Company, Inc.*, 315 U. S. 685, 692; *N.L.R.B. v. Isthmian Steamship Company*, 126 F. 2d 598, 600 (C.C.A. 2); *N.L.R.B. v. Mason Manufacturing Company*, 126 F. 2d 810, 814 (C.C.A. 9). Cf. *Matter of The Iron Fireman Manufacturing Company*, 69 N.L.R.B., No. 4.

the parties.⁵ Moreover, that the parties clearly understood the difference, in terms and effect, between a contract requiring maintenance of membership and one which does not, becomes apparent by comparing the contract in effect at the time of the discharges with the contract subsequently executed by the parties in March 1946. In the latter contract the parties expressly provided that employees who failed to maintain their membership in the Union could be discharged.

3. In Section VI of the Intermediate Report, entitled "The Remedy," the Trial Examiner stated

⁵In this connection, see Matter of Pittsburg Plate Glass Company, 66 N.L.R.B. 1083, where the contract contained a provision that the Company would cooperate with the Union "to the best interests of all parties." A majority of the Board said: "We do not regard as controlling testimony of management and UMW representatives to the effect that in their opinion the respondent was bound to require membership in the UMW as a condition of employment or that the respondent would accede to such a demand if the UMW insisted on it. The record does not establish that the respondent agreed to bind itself to require membership in the UMW as a condition of employment. * * * the proviso [to Section 8(3)] affords no protection to an arrangement in which an employer may at will discriminate in favor of or against any employee with respect to the requirement of union membership. An employer, however excellent its motives, may not refuse to execute the sort of agreement contemplated by the proviso and later invoke the proviso as a defense to a discharge made under a different agreement." To the same effect, see Matter of The Iron Fireman Manufacturing Company, 69 N.L.R.B., No. 4.

that the respondent would not "be required or permitted," under the recommended order therein, to vary those provisions of the contracts in question which establish "wages, hours of employment, rates of pay," etc. While we agree with the Trial Examiner that our order does not require the respondent to cease and desist from giving effect to these contract provisions, we do not now consider it necessary to pass upon the permissibility of doing so.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, G. W. Hume Company, Turlock, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Cannery Workers Union, Local 22382, A. F. of L., and California State Council of Cannery Unions, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any extension, renewal, modification, or supplement thereof, or to

any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of its employees;

(c) Discouraging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or encouraging or discouraging membership in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Clarence McVay and to the employees whose names appear in Appendix B of the

Intermediate Report, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, in the manner set forth in Section VI of the Intermediate Report, entitled "The Remedy";

(b) Make whole the employees whose names appear in Appendices B and C of the Intermediate Report for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in the aforementioned Remedy Section of the Intermediate Report;

(c) Withdraw and withhold all recognition from California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the representatives of such employees:

(d) Post at its cannery at Turlock, California, copies of the notice attached hereto, marked "Appendix A."⁶ Copies of the notice, to be furnished by the Regional Director for the Twentieth Region,

⁶In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps the respondent Hume has taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges that the respondent California Processors and Growers, Inc., committed unfair labor practices, be, and it hereby is, dismissed.

And It Is Further Ordered that the complaint, insofar as it alleges that the respondent Hume discriminated against John M. Smith within the meaning of Section 8(3) of the Act, be, and it hereby is, dismissed without prejudice.

Signed at Washington, D. C., this 31st day of October, 1946.

[Seal]

NATIONAL LABOR
RELATIONS BOARD,
PAUL M. HERZOG,
Chairman,
JOHN M. HOUSTON,
Member.

APPENDIX A

Notice to All Employees

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to those of the employees named below who have not been reinstated, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Oscar Johnson
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Clarence McVay
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White
Irwin C. Heagle	

We Will make whole the following named em-

ployees for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not recognize the Cannery Workers Union, Local 22382, A. F. of L., and California State Council of Cannery Unions, A. F. of L., as the exclusive representatives of our employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not give effect to our contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or encourage or discourage membership in any other labor organization of our

employees, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. All our employees are free to become or remain members of Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment of any employee because of his membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY

.....
(Employer)

By
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

INTERMEDIATE REPORT

Statement of the Case

Upon a fourth amended charge duly filed on March 26, 1946, by Food, Tobacco, Agricultural & Allied Workers Union of America, affiliated with the Congress of Industrial Organization, herein called CIO, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint on March 27, 1946, against G. W. Hume Company, Turlock, California, herein called Hume, and against California Processors & Growers, Inc., herein called the Association, alleging that Hume and the Association, collectively referred to herein as the respondents, had engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and

(3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the fourth amended charge, accompanied by notice of hearing thereon, were duly served upon CIO, upon each of the respondents, and upon two affiliates of the American Federation of Labor, namely the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters, and California State Council of Cannery Unions, herein called the Council, designated in the complaint as parties to the contract and collectively referred to herein as AFL.

With respect to unfair labor practices the complaint alleged in substance that the respondents: (1) since approximately August 1, 1945, interfered with, restrained, and coerced Hume's employees in the exercise of their rights as guaranteed in section 7 of the Act by (a) urging, persuading, and warning the said employees to refrain from becoming or remaining members of CIO, (b) demanding, under threat of dismissal, that the said employees join and remain members of A.F.L. and pay dues, fees, and assessments to A.F.L., (c) granting to A.F.L. representatives access to Hume's plant while denying like privilege to representatives of C.I.O., and (d) requiring the said employees, as a condition of employment, to obtain clearance cards from A.F.L. and to execute agreements for the check-off of A.F.L. dues; (2) discharged on or about November 21, 1945, 28 named Hume employees¹ and discharged

¹The names of these persons are listed on Appendix "A," hereto annexed.

Harlie Frischneckt² and Clarence McVay on November 26, 1945, and December 7, 1945, respectively, because of their membership and activities in behalf of CIO and their refusal to join and pay dues to A.F.L., that the said dischargees were refused reinstatement for the same reasons for which they were discharged, except that some of the dischargees were rehired on or about February 7, 1946. The complaint further alleged that a certain collective bargaining contract entered into by Hume and AFL, on or about March 25, 1946, is illegal and void because it was entered into by the parties thereto with the knowledge that the question of representation of Hume's employees was pending undetermined before the Board.

The respondents duly filed a joint answer in which they admitted the allegations of the complaint with respect to the nature, extent, and character of their respective businesses but denied the commission of the alleged unfair practices. The answer also denied that at the time of the execution of the contract between Hume and A.F.L., on or about March 25, 1946, there was pending undetermined before the Board the question of representation concerning Hume's employees.

Pursuant to notice, a hearing on the complaint was held in Modesto, California, on April 10 and

²Also referred to in the record as Harley Cruikshank.

11, 1946, before the undersigned, Howard Myers, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, C.I.O. and A.F.L., were represented by counsel and participated in the hearing. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. At the opening of the hearing, counsel for A.F.L. moved to dismiss the complaint in its entirety on the grounds that (1) the proper forum to litigate the questions raised by the complaint is the United States Circuit Court of Appeals for the Ninth Circuit, (2) the Board, in its Supplemental Decision and Order of February 15, 1946, in *Matter of Bercut-Richards Packing Company, et al.*, having, in effect, decided that Hume and A.F.L. could not lawfully enter into a new contract, has disqualified itself from deciding this case, and (3) the complaint does not state a cause of action. The motion was denied by the undersigned with permission to renew.³ A.F.L. then filed an answer denying, in effect, that the respondents committed the alleged unfair labor practices. At the conclusion of the taking of the evidence, Board's counsel moved to conform the complaint to the proof, with respect to minor matters, such as the correction of dates,

³This motion was not renewed nor was any other motion to dismiss the complaint, or any part thereof, made during the course of the hearing.

misspelled words, and the like. The motion was granted without objection. Oral argument, in which counsel for all parties participated, was heard at the conclusion of the hearing and is part of the record. The parties were granted leave to file briefs on or before April 16, 1946, with the undersigned. A brief has been received from counsel for A.F.L.⁴

Upon the record in the case and upon his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Businesses of the Respondents

G. W. Hume Company is a California corporation having its principal offices and plant at Turlock, California, where it is engaged in canning and processing fruits and vegetables. More than 62 per cent of Hume's products, valued in excess of \$1,900,000 annually, are sold and shipped to customers located outside the State of California.

California Processors & Growers, Inc., is a non-profit California corporation, having its principal offices and place of business at San Francisco, California, where it is engaged in, among other things,

⁴The time to file was extended to April 23, 1946. A.F.L.'s brief was received on April 29, 1946, but has nonetheless been given full consideration.

promoting friendly relations and cooperation between its 61 members and their respective employees; in ascertaining and disseminating among its members facts relative to employer-employee relationship; in representing its members as a group in collective bargaining with their respective employees; and in advising and conferring with its members relative to matters pertaining to their respective employees. Each member of the Association sells and ships a substantial amount of its products to points outside the State of California.

Each of the respondents concedes that it is engaged in commerce within the meaning of the Act.

II. The Organizations Involved.

Food, Tobacco, Agricultural & Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, California State Council of Cannery Unions and its constituent unions, one of which is Local 22382, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of Hume and employees of the Association's other members.

III. The Unfair Labor Practices.

1. The Master Agreement and the Modification and Amendments Thereto

In the fall of 1940, Cannery Workers Union Lo-

cal 22382, a Federal Local Union of the American Federation of Labor, commenced an organizational drive among the employees of Hume, a member of California Processors and Growers, Inc., herein called the Association. At about the same time, the employees of the other members of the Association, were being organized by Local 22382 or by some other Cannery Workers Union, similarly affiliated. On or about June 10, 1941, an agreement, herein referred to as the Master Agreement,⁵ was executed by and between the Association, as collective bargaining representative for and on behalf of its members which included the respondents Hume, and California State Council of Cannery Unions, herein called the Council, as the collective bargaining representative for and on behalf of the various Cannery Workers Unions. On or about July 3, 1941, pursuant to a provision of the Master Agreement, Hume executed an agreement with Local 22382 adopting the Master Agreement as applied to its operations. The aforesaid Master Agreement was amended on or about January 26, 1942, and again on or about July 10, 1943. In the latter year the American Federation of Labor also became a party to the contract, adopting and ratifying all the terms and conditions of the Master Agreement. The Master

⁵Also referred to in the record as the "green book agreement."

Agreement, as last amended, was to continue to March 1, 1945, and thereafter from year to year unless either of the parties informed the others, within a specified time, of its intention to modify the said contract. No notice of intention to modify was served within the specified time prior to March 1, 1945, and the Master Agreement was automatically renewed to March 1, 1946.

The section of the Master Agreement, as amended, which directly bears upon the pertinent issues of this proceeding reads, in part, as follows:

Section 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.⁶ In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on

⁶Section 8 establishes the grievance procedure and provides for arbitration.

the seniority lists, as defined in Section 9 hereof⁷ are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the qualifications of all its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are

⁷Section 9 reads, in part as follows:

Said [seniority] list shall be based on the beginning date, as accurately as can be determined, of continuous regular employment or consecutive seasonal employment, as the case may be, as such employment is hereinafter defined. All employees covered by this agreement and referred to in Section 4 (a) hereof shall be named on said list.

Section 4 (a) states "all work performed in Employer's canneries and storehouses, warehouses, labeling rooms or in sheds or lots adjacent thereto, where commodities or materials are processed or stored."

available when new employees are to be hired.
“New Employees,” for the purpose of this
agreement, are defined to be persons who are not
on the seniority list of the hiring plant, as de-
finied in Section 9 hereof, even though they may
have been employed previously by said plant.
As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. If such
union members are not available for such em-
ployment, the Employer may hire any person
not a member of the Union provided that such
person will be required to file an application for
membership in the local union before being put
to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not reasonably refuse to accept such person as a member. (Underscoring supplied.)⁸

⁸The matter in brackets is a modification made on or about July 10, 1943, due to the then existing man-

Subsection (b) of Section 3 provides for the mechanics of carrying out the foregoing and requires the contracting local union to have a representative available in the plant to receive the applications from new employees. In this subsection "the local union agrees to assume responsibility for completing the matter of subsequent affiliation by new workers as members of the Union."

On or about August 21, 1944, Local 22382 and Hume entered into the following agreement:

The Company hereby agrees to deduct from the pay of each employee employed by the Company who is covered by this agreement all Union dues and assessments, and for this purpose the Union shall provide the Company, on or before the first day of each month, the amount of dues payable per month to the Union by each member. Said dues shall be deducted from the pay check of the employee on any pay-day that falls on the day following performance of three days' work by the employees in any calendar month.

power shortage, to permit the canneries to hire during the 1943 canning season "emergency workers" who, however, had to either file an application for membership in the local union of the Council or obtain an "emergency card" therefrom before being allowed to work.

The Company will promptly notify all employees of these conditions by placing an appropriate statement thereof on the bulletin board in the plant of the Company.

If any new assessment shall be levied as against members of the Union employed by the Company, such assessments must first be approved (sic) by the Union and notice thereof given to the Company before such assessments can be deducted from the salary of the employees by the Company.

Any sums deducted by the Company for the benefit of the Union in any months shall be payable to the Secretary-Treasurer of the Union on or before the 25th day of the following month. The Secretary-Treasurer of the Union shall furnish an appropriate receipt to the Company upon receipt thereof. The Company shall not be liable to the Union for any sums other than those collected by the Company.

The Company and the Union shall work out a mutually satisfactory agreement, by which the Company will furnish the Secretary-Treasurer of the Union, monthly, a record of the dues, from whom the deductions have been made, together with the amount of such deductions. (Underscoring supplied.)

In Witness Whereof we have hereunto set our hands and seals this 21st day of August, 1944.

GEORGE W. HUME
COMPANY.

By R. G. HUME,
President.

CANNERY WORKERS'
UNION # 22382.

[Seal] R. M. TOMSON,
Secretary-Treasurer.

Reference Is Made to "Dues, Collection and Check-Off Agreement Dated the 21st Day of August, 1944."

It is hereby mutually agreed and understood that this letter becomes a part of the above-mentioned Agreement for the purpose of fixing possible expiration date of the Agreement by notification by either party on or before March first of any year; the termination of the Agreement to become effective if notice is filed by either party on or before 12 o'clock noon on the first day of March of any year.

GEORGE W. HUME
COMPANY.

By R. G. HUME.

Accepted This 21st day of August, 1944.

CANNERY WORKERS'
UNION # 22382.

[Seal] By R. M. TOMSON,
Secretary-Treasurer.

In June, 1945, the Association, the Council, and the American Federation of Labor entered into a written agreement which bore the following legend:

The within memorandum of agreement contains the amendments to the collective bargaining contract between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions, as negotiated during 1944 and as ordered by the National War Labor Board in Case No. 111-7430-D. This memorandum shall constitute an interim memorandum modifying the amended contract executed July 10, 1943 (originally adopted June 10, 1941), and the Supplementary Emergency Agreement of the same date in 1943, for the purpose of setting forth the understandings reached by the parties since March 1, 1944, and the subsequent directive orders of the War Labor Board, pending the conclusion of negotiations for the 1945 season, at which time it is contemplated that the basic agreement will be reprinted, with the following modifications included:

This agreement provided, among other things, for the inclusion of a new sub-section to Section 3 of the Master Agreement of June 10, 1941, as amended. This new sub-section reads as follows:

3 (c) The Employer will deduct from their wages and turn over to the proper officers of the

union the initiation fees and union dues of such members of the union as individually and voluntarily certify in writing that they authorize such deductions. Such authorization shall apply until or unless it is revoked individually and voluntarily, in writing, by such union members.

The Employer and the Union each agree that neither of them nor any of their officers or members, or employees, will intimidate or coerce employees into executing such certificates or causing them to be revoked. If any disputes arise as to whether there has been any violation of this pledge, such disputes shall be regarded as a grievance and submitted to the grievance procedure established by this agreement.

2. Attempts to Induce the Employees to Clear Through AFL

At or about the time of the execution of the 1945 agreement referred to in the immediately preceding paragraph, all the "regular" employees of Hume,⁹ being some 20 or 30 in number, were assembled in the cannery during working hours and were ad-

⁹At the time of this incident, the Hume Cannery was not in production and hence only "regular" employees as distinguished from "seasonal" employees were working in the plant. The names of the above referred to "regular" employees appear on Hume's seniority list.

dressed, in the presence of Factory Superintendent Fordham, by H. C. Torreano and L. B. Brown, representatives of Local 22382. Torreano and Brown suggested that Local 22382 affiliate with the Teamsters. The employees suggested that a vote be taken of the membership.¹⁰ This suggestion was rejected by Torreano and Brown who informed the employees that the question of affiliation could not be voted. After a lengthy discussion the employees decided that they did not desire to affiliate with Teamsters. Torreano and Brown then left the cannery.

Later in June, 1945, each "regular" employee of Hume handed to President R. G. Hume his signed revocation of the dues check-off authorization previously executed. Thereafter no dues were deducted by Hume from the pay of its "regular" employees nor did these employees pay any dues thereafter to Local 22382 or to any affiliate of the American Federation of Labor.

In the early part of August, 1945, just prior to the peach canning season, the "regular" employees of Hume were notified by their respective foremen to assemble in one of the check rooms.¹¹ Besides Torreano, Brown, and Factory Superintendent Fordham, the meeting was attended by seven or

¹⁰Local 22382 admits to membership employees of other canneries in the vicinity of Hume's.

¹¹At the time of this meeting, only "regular" employees were working in the cannery.

eight representatives of Teamsters¹², Assistant Superintendent Gallardo, and F. S. Clough, a field representative of the Association. According to the undenied and credible testimony of Employee Irwin C. Heagle, Clough sought to induce the "regular" employees "to clear through the Teamsters' organization in order to keep the plant operating in a peaceful manner" throughout the coming peach canning season. Heagle further testified, without contradiction, and the undersigned finds, that, in response to a question put to him, Clough stated that if these employees cleared through the Teamsters they would not be compelled to execute dues check-off authorizations; and that, relying upon Clough's assurances, all the "regular" employees of Hume signed the requested clearance slips at this meeting.

¹²The record does not disclose the means whereby Teamsters became injected into the picture as representative of the employees other than that in May or June, 1945, President Green of the A.F.L. "ordered" Local 22382 to affiliate with Teamsters. There is no evidence of a merger of Teamsters and Local 22382, either by consolidation, absorption, or otherwise. In August, 1945, however, Teamsters appear to have taken control for all practical purposes and to be the group with whom Hume was dealing. This question is not material, however, to a determination of the present issues and for the purposes of this report, the term A.F.L. will be applied generally to such organizations here involved which are affiliated with the American Federation of Labor without attempting to distinguish between them as "Cannery Workers" or Teamsters, except when such distinction may be required by the matter then under discussion.

Those "regular" employees whose employment started after the execution of the Master Agreement, had cleared with Local 22382 when they were originally hired as "new employees"; and since then, as employees on the seniority list, no further clearance had been required of them either under the Master Agreement or by custom, for recurring seasons.

On August 8, 1945, the first day of the peach canning season, Heagle, who had been the chairman of the shop committee for Local 22382, complained to Fordham that all the seasonal employees were being "double crossed" because they were forced to execute dues check-off authorizations before they could obtain clearance slips. Heagle's protest was of no avail since General Superintendent Birchall continued to insist that all the seasonal employees, some of whom had worked for Hume for a great many years and obviously were on the seniority list, "clear with the union" before they could be put to work, notwithstanding that he knew Local 22382 was refusing to issue clearance slips until the employees should execute a check-off authorization reading as follows:

Authorization for deduction of Union
initiation fees and Union dues.

I,....., a member of Cannery Workers
Union . . . A. F. of L., and an employee of

..... at,
do hereby individually and voluntarily certify
that I authorize, by this writing, the above

named Company to deduct from my wages, and turn over to the Treasurer of Cannery Workers Union of . . . A. F. of L., any and all union initiation fees and dues certified by said Union to said employer now or hereafter to be due from or payable by me to said Union. This authorization is signed by me under the provisions of Section 3 (c) of the collective bargaining agreement between California Processors and Growers, Inc., and the American Federation of Labor and California State Council of Cannery Unions, and shall continue in force until or unless it is revoked individually and voluntarily by me, in writing.

Between August 8 and 13, approximately 150 of the 400 people then in Hume's employ executed and personally delivered to President Hume signed revocations of the dues check-off authorizations which they had been compelled to execute before clearance slips were issued to them.

3. CIO organizes the employees. Events leading up to the November 20, 1945 discharges.

During the latter part of August 1945, CIO commenced an organizational drive among Hume's employees. For some weeks previous, organizational drives were being conducted by CIO and another labor organization among the employees of other members of the Association as well as those of non-members. Numerous petitions had been filed by these 2 labor organizations with the Board seeking certifi-

cation of representatives of the employees in the various canneries. The Board, by appropriate order, consolidated these petitions and held hearing thereon on various days between July 3, and September 11, 1945.¹³ On October 12, 1945,¹⁴ the Board issued its Direction of Election and Order wherein it directed that an election by secret ballot be conducted under the auspices of the Regional Director for the Twentieth Region among the employees of all the members of the Association and certain non-members. In this order the Board found that the employees, with the customary exceptions, of all members of the Association, including the respondent Hume, constituted an appropriate unit.

Between October 11 to October 18, 1945, elections were held at the various canneries.¹⁵ The election at Hume was conducted on October 17. Thereafter objections to the conduct of the elections were filed by AFL, and on the basis of such objections, the Board on February 15, 1946, issued its Supple-

¹³This proceeding is entitled *Matter of Bercut-Richards Packing Company, et al.* AFL was a party to this proceeding and participated therein by counsel.

¹⁴On October 5, 1945, the Board issued a telegraphic decision subject to confirmation by a written opinion, which was issued on October 12, 1945.

¹⁵Except that an election at one of the canneries was held on December 20, 1945.

mental Decision and Order setting aside the elections.¹⁶

General Manager Birchall testified, and the undersigned finds that shortly after the 150 employees had handed President Hume their revocations of check-off authorizations, copies of which were sent to Local 22382, Brown and another Local 22382 representative sought to persuade the signers of the revocations to cancel them, but they refused to do so; that no dues were deducted from the pay of the signers of the revocations after their receipt by Hume; that early in November 1945, at the beginning of the fall spinach canning season, Local 22382 demanded that Hume "lay off or fail to employ all those who would not clear" through Local 22382; that on receipt of this demand, Brown, the representative of Local 22382 and President Hume placed a telephone call to the Association to check the legality of the request; that the conversation was be-

¹⁶The tally of the votes at the elections of the employees of the Association's members show:

Approximate number of eligible voters.....	23,545
Valid votes counted.....	10,968
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4,701
Votes cast for F.T.A.-C.I.O.....	6,067
Votes cast for Cannery and Food Process Workers Council of the Pacific Coast, In- dependent	110
Votes cast against participating labor organi- zations	90
Challenged ballots.....	1,291
Void ballots	248

tween President Hume and Clough; that Clough advised President Hume that the company had no right to discharge workers for their refusal to "sign up" with the union; that President Hume conveyed this information to Local 22382 and refused its demand; that on November 19, the Teamsters Union refused to allow E. J. Swanson Co., an independent truck contractor, to deliver spinach to the Hume cannery; that Torreano informed President Hume, who arrived at the cannery at about 11 o'clock that night, "the spinach deliveries would be stopped until certain employees were discharged"; that on the following day, November 20, the employees could not work because AFL had placed a picket line around the cannery and refused to allow any truck to enter.

On the morning of November 20, a representative of Local 22382 telephoned President Hume and gave him a list of 28 persons whose discharge Local 22382 was demanding on the ground that they had not paid their dues and had been suspended. The telephone call was followed by a letter which was handed to President Hume later in the day. Upon receiving this demand, Hume assembled the "regular" employees, explained the situation, had the list of names read aloud by Heagle, and told those whose names had been read that they were laid off until the matter could be straightened out.¹⁷ Follow-

¹⁷The "regulars" who were thus laid off included, A. E. Berry, Ernest G. Bishop, Vider Bjorklund, Jasper J. Bobb, Harold Dillard, William J. Ely, Clyde Faddis, H. P. Frazier, Harlie Frischnekt, Irwin C. Heagle, Oscar Johnson, T. Boyd Mc-

ing this action, AFL lifted the picket line and allowed spinach to be delivered to the cannery.¹⁸ Thereupon the operation of the cannery continued

Kamey, Archie Miller, A. E. Moore, Harry E. Pier-son, Abe Thissen, Neal Watts, R. B. White, all of whose names are listed as "regulars" on Appendix B, hereto annexed. While Moore's name was not in the letter, it was one of those originally given Hume over the telephone. The omission, which was unintentional, was subsequently corrected on November 20, by telephone.

¹⁸By this time, the contest between AFL and CIO for representation of the employees of the members of the Association had reached a high pitch. The following letter, dated November 20, 1945, from the Association to the Council not only illustrates this, but also sets out with clarity, the position of the Association on the subject of discharges of employees for failure to maintain membership in good standing in their local union.

This will acknowledge receipt of your letter of November 17, 1945 concerning a bulletin alleged to have been issued by Local 82 FTA-CIO, and quoted by you as follows:

"We have reached an agreement with the California Processors and Growers and that no one has to pay dues to the AFL to work in the canneries. Every FTA-CIO member should immediately sign a revocation slip and start paying dues to Local 82, FTA-CIO."

Replying to your demand for "an official statement . . . as to whether or not any understanding or agreement had been reached between the FTA-CIO and the California Processors and Growers," the following is our response:

1. California Processors and Growers, Inc.

normal until the end of the spinach canning season on or about January 5, 1946.

has reached no agreement with FTA-CIO that "no one has to pay dues to the AFL to work in the canneries."

In discussions with representatives of FTA-CIO, we have reiterated our position that the existing collective bargaining agreement will be observed by California Processors and Growers, Inc. Since these discussions, we have received a telegram from Edgar Warren, Director of Conciliation Service, U. S. Department of Labor at Washington, D. C., advising us that the contract with the AFL remains "in force and effect until March 1, 1946."

2. California Processors and Growers, Inc. has advised representatives of FTA-CIO that new employees are required to affiliate with the AFL as a condition of employment, and that canneries are required to supply the AFL unions with lists of all employees who fail to present evidence of AFL Union membership.

In discussions with representatives of FTA-CIO, we have outlined the procedures followed under the contract, and have advised them that despite the fact that we are not obligated by contract to discharge employees for failure to maintain union membership, nevertheless, all disputes arising in this connection are required to be submitted to the Central Adjustment Board, under the contract, for final determination.

We have in no wise changed our position concerning payment or nonpayment of dues, nor have we reached any agreement with FTA-CIO concerning revocation slips, which are controlled by the 1945 W.L.B. Directive Order.

A copy of this communication is being sent to the officials of FTA-CIO.

4. The November 20 and 21, 1945 discharges

On the morning of November 21, AFL blocked the entrances to the cannery and permitted no male employee, except ex-service men, to enter who was unable to exhibit a current clearance slip. Those who were barred included not only the group of "regulars" who had been "laid off" the previous day, but also some seasonal employees who were on the seniority list. These excluded employees attempted to force the picket line. A scuffle ensued and after it had been stopped by the watchman, Factory Superintendent Fordham was sent for.

Meanwhile, the women employees and the ex-service men who had been permitted to pass through the picket line without exhibiting clearance slips were being canvassed within the cannery by Assistant Superintendent Gallardo as to whether they were members in good standing in Local 22382. Those who were not, were told they could not work until they had cleared with Local 22382 and were sent off the job. These reached the outside while Fordham was addressing the men who had been excluded and were in the group as Fordham told the group that they could not work there, and ordered them off the premises.¹⁹

¹⁹Fordham denied that he told the group that they were discharged, as testified to by several Board witnesses. He testified that he "told them to get off the property . . . until they had cleared with the union." The undersigned finds that the employees listed in Appendices B and C, hereto annexed, were in fact discharged at that time.

Pursuant to Fordham's orders, all those present, both the "regular" employees and those seasonal workers²⁰ on the seniority list whose names make up Appendix C, hereto annexed, left Hume's premises and were not rehired by Hume until early in 1946, as is hereinafter set out. Although the "seniority list" was not introduced in evidence, it is found that each of the persons "laid off" on November 20, 1945, and those seasonal employees who were discharged on November 21, 1945, whose names are listed on Appendices B and C, hereto attached, were employees coming within the Master Agreement's description of employees on the seniority list.

5. The discharge of Harlie Frischknecht

On November 20, 1945, Hume discharged Harlie Frischknecht under the following circumstances:

In April 1945, following his discharge from the

²⁰The seasonal workers who were thus discharged on November 21, 1945, included Clemie Robinson, Monroe Robinson, Thomas L. Broll, Ruth Waite, Agnes Hopkins, Myrtle Brown, Genevieve Alsup, Marguerite Watts, Clifford C. Luther, R. E. Rearick, all of whose names are listed as seasonal employees on Appendix C hereto annexed. The name of John M. Smith, a seasonal employee listed in the complaint, has been omitted from Appendix C and no finding is made with respect to his discharge since the record contains no evidence upon which to base a finding as to his status on November 21, 1945, or thereafter. Smith did not appear at the hearing. Accordingly, the undersigned will recommend that the complaint as to him be dismissed without prejudice.

Armed Forces, Frischknecht was hired by Hume as a "new" employee and given "regular" employment in the warehouse. At the time of his employment, Frischknecht complied with the requirements of the Master Agreement by making application for membership in Local 22382, and received the clearance slip that was necessary to enable him to begin work with Hume. In August 1945, warehouse Superintendent Granberg, told Frischknecht and the other warehouse employees that they would have to obtain new clearance slips "through the AFL in order to work" and sent them to an AFL representative in the vicinity of the payroll office who, he said, would sign them up. Frischknecht went as directed and told the AFL representative that he did not want to "get mixed up with the Teamsters". Nonetheless, the representative insisted that Frischknecht not only sign a clearance slip but that he execute the check-off authorization heretofore referred to. Frischknecht did as required and returned to work. Later in the day, he executed and delivered to Hume a revocation of the check-off authorization.

In its records, Local 22382 appears to have erroneously entered Frischknecht's name as Harley Cruikshank, for in its letter of November 20 to Hume demanding the dismissal of the warehouse crew, it omitted the name "Harlie Frischknecht" but included the name "Harley Cruikshank", although there was no person of that name employed by Hume. On receipt of this letter from Local 22382, the warehousemen were assembled and told that they would be laid off. The confusion of names led to

some inquiry by Frischknecht as to whether he was included. He was told that his name was not on the list but had his attention called to the "Cruikshank" name. Actually Frischknecht had paid no dues, was a part of the delinquent group, and was unable to understand why his name should be omitted. He joined the others when they left the cannery pursuant to the group lay-off above described.

On November 21, the group arrived at the cannery at about 8 in the morning and attempted to go through the picket line. The scuffle heretofore referred to took place, following which Fordham appeared, told the group, including Frischknecht, that they could not work there and ordered them away.

The following Monday, November 26, Frischknecht again went to the plant where he inquired of Birchall as to whether his name was on the list. After consulting the list, Birchall told him he was not on the list and sent him in to work. He worked about 4 hours. He testified that then

the AFL man came around and wanted to know if I was going to go up before a board and pay my back dues, and everything, and I talked with him there quite a while, and he said he would vouch for me if I wanted to go into the AFL, and I told him I would think it over, and when noon come I got to thinking about it, and I found out we would have to pay dues to the AFL, so I just left and never reported back

to work anymore, because I did not figure on paying AFL dues.

Frischknecht was in the same position as were all the others in the warehouse group. Only the circumstance of the error in names excluded him from being included in the group listed on Appendix B, hereto annexed. He realized this. He had joined the CIO some months before and knew he was in default of dues in AFL. The discharge of November 20 and the confirmatory action by Fordham on November 21 was notice to him of the intent to include him when the name Cruikshank was erroneously used. His conversation with the AFL representative on November 26 was further notice that it was through error that he had been permitted to return to work on that day. When he left the job, it was with the appearance of having done so voluntarily. Actually, however, there was nothing voluntary about it. His termination actually took place on November 20, and it is so found, but whether the 20th or 26th, it was impelled by Hume's conduct toward the group and the knowledge, based on that experience, that his refusal to reinstate himself with AFL would result in his dismissal. Under such circumstances, Frischknecht's termination is found to be a discharge attributed to Hume's conduct, based on Frischknecht's refusal to maintain membership in good standing in AFL. This finding is buttressed by Frischknecht's undenied and credited testimony that shortly after November 26, he was told by Supervisor Orville Hopkins that he would not be able to work unless he "would sign up with the AFL."

6. The discharge of Clarence McVay

Clarence McVay, a seasonal employee, was discharged by Hume on December 7, 1945, for failure to maintain his membership in Local 22382. When McVay was first hired by Hume sometime in 1945, he received a clearance from Local 22382, obviously after he had made application for membership in that organization, and at the same time executed a dues check-off authorization. However, he revoked the check-off authorization soon after its execution and never paid any dues to Local 22382. On December 7, 1945, a representative of Local 22382 came to the cannery and told McVay, in the presence of his foreman, that if he did not pay his union dues he could not work. When McVay refused, his foreman, at the request of the representatives of Local 22382, took McVay's time card, punched it out on the clock, and handed it to McVay. McVay then placed the card in the box where punched cards are usually placed and left the cannery. The undersigned finds that McVay was discharged by Hume on December 7, 1945, because of his failure to pay dues to a labor organization.

7. Hume's attitude toward compulsory maintenance of membership

From the time the Hume employees revoked their dues check-off authorizations in June 1945, Hume endeavored to induce its employees to comply with AFL demands and pay dues to the AFL. These efforts were made, as Birchall and President Hume

admitted at the hearing, for the purpose of maintaining harmonious relations with Local 22382 and to induce the Teamsters to permit spinach and other products to be shipped in and out of the Hume cannery. Hume's actions appear to have been based on an erroneous understanding of the Master Agreement, but this was clarified and in November before any of the discharges herein discussed took place. As a result of advice Hume received concerning the provisions of the Master Agreement it refused the demands of AFL to discharge any employee for failure to maintain good standing membership in Local 22382. However, as a result of the AFL pressure it capitulated as found above. This finding is buttressed by the credible testimony of Birchall who testified as follows:

At that time of the fall spinach signup, the management, R. G. Hume, was told by the union representatives, Brown and Evans . . . to lay off those workers who refused to sign up. These included full time workers who had been working all year. Whereupon Brown and Hume placed a call to the C. P. & G.²¹ to check the legality of the union's request. A conversation between Hume and Clough. Clough advised that the company had no right to discharge workers . . . for their refusal to sign with the union. The company conveyed this information

²¹C.P.&G. is referred to herein as the Association.

to the Union. . . . The company conveyed this information to the union, and acted accordingly. Before checking with the C.P.&G., the company was under the impression that the workers had to sign up in order to stay on the job, and those workers who were hired were so informed. This position was reversed and clarified upon receipt of the C. P. & G.'s advice. No workers were discharged at this time because of their failure to sign up.

8. Reinstatement in 1946

On February 7, 1946, Hume rehired some of the regular employees it had laid off on November 20, 1945. Others were rehired from time to time thereafter.²² These persons were rehired and were in Hume's employ at the time of the hearing, despite the fact that they had not paid dues to Local 22382 since June 1945, and obviously had not presented any clearance credentials.

²²While the record is clear that some of the group were discharged on November 20, 1945, were subsequently re-employed by Hume for portions of the canning seasons, it does not reflect with definitiveness all of those who were so rehired nor the length of their respective employment after being rehired. For this reason no specific finding is made as to the extent of re-employment by Hume of any of those who are here involved, except as to Clarence McVay and John M. Smith, seasonal employees on the seniority list, neither of whom was rehired by Hume in any capacity, and Oscar Johnson, a "regular" employee who entered the Armed Services sometime after November 20, 1945, and was still in the services at the time of the hearing herein.

On February 8, 1946, a special meeting of the Central Adjustment Board²³ was held. According to the minutes of that meeting the following ensued:

Chairman Pankey presented the complaint involving the G. W. Hume Co. dated February 4, 1946 as follows:

Nature of Complaint:

"The G. W. Hume Company has mailed letters to approximately twenty-five ex-members of Local Union #22382 who were not in good standing.

"The letters mentioned above advise and request these ex-members return to work at the Hume plant on Thursday, February 7, 1946."

Mr. St. Sure described the various discussions held in the recent past concerning the application of Section 3 (a) of the agreement, stating that those discussions have resulted in no common agreement between union and employer representatives concerning the interpretation of Section 3 (a) of the contract.

²³The Master Agreement provides for a Central Adjustment Board, composed of an equal number of representatives of the Association and of the Council, to adjust grievances which cannot be satisfactorily adjusted by the individual member. The agreement further provides that the decisions of the board shall be final and binding upon the parties concerned, unless there is a deadlock among the members of the board, then, in that event, an outside person, mutually satisfactory, shall be called upon to make the final decision.

Mr. St. Sure described the question at issue in this case as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc. and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.”

It was moved by Mr. Elorduy, seconded by Mr. Rizzo, that the G. W. Hume Company be required to maintain a union shop in accordance with the above considerations which comprise the issue.

The following were designated as voting members:

Ted Lopez	A. W. Ford
Harry Rizzo	Ralph Wanzer
Mike Elorduy	A. I. Walters
Rose Sanders	Sam Kai Kee

A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an arbitrator for decision.

Following discussion upon the choice of an arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as arbitrator and the secretaries of California State Council of Cannery Unions and of California Proces-

sors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.

The same day, the following "Stipulation to Arbitrate" was entered into by the Association and the Council:

It is hereby agreed by the parties listed below that the issues described below shall be heard by an arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

The issues to be determined are as follows:

Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Union, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.

The decision of the arbitrator shall be final and binding upon the parties. No price issue is involved.

By letter dated April 3, 1946, George Cheney, the arbiter designated by the United States Conciliation Service of the United States Department of Labor confirmed the oral statement he had made to counsel for the Association several weeks prior thereto that he would not serve as arbitrator in the matter. At the time of the hearing no other arbitrator had been appointed and nothing further had been done in the matter.

9. Vacation of Election Results.

On February 15, 1946, the Board issued a Supplemental Decision and Order in the "Bercut-Richards" matter wherein the Board, one member dissenting, ordered the elections which had been held pursuant to its Direction of Election in that consolidated case, vacated and set aside. The majority decision of the Board reads, in part, as follows:

Upon consideration of all the foregoing facts, we are of the opinion that the elections were not, under the circumstances here presented, attended by such procedural safeguards or certainty concerning eligibility as to constitute a proper foundation for a Board certification in an industry which had been the scene of such bitter strife. There is substantial doubt whether the results are truly representative of the desires of the employees who should have been eligible to vote therein. (See Matter of Kennecott Copper Corporation, 55 N.L.R.B. 928. See also, Matter of Mobile Steamship Company, 11 N.L.R.B. 374). It is of vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach. In this view of the matter, it is relatively unimportant that there is no sure proof that one party to the election was prejudiced more than the other.

We therefore are constrained to conclude that the balloting was not conducted in accordance with

our usual standards or under conditions tending to create confidence in the result or to lay the foundation for satisfactory bargaining. We are of the opinion, therefore, that the purposes of the Act will best be served by setting aside all of the elections held herein.

While we view the record as requiring this result, we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current A.F.L contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles, (see *Midwest Piping & Supply Co., Inc.*, 63 N.L.R.B. 163. See also *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N.L.R.B. 21), the employers may not pending a new election, give preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; (moreover, no requests for discharges resulting from activity in the election are justified even under the present agreement. See *Matter of Rutland Court Owners*, 44 N.L.R.B. 587,

46 N.L.R.B. 1040), the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Subsection 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

In order to expedite final disposition of the case, the Board will conduct new elections as soon as eligibility lists can be prepared which meet the objections discussed herein. Upon appropriate motion, the Board will explore the possibility of holding the election at an early date by use of mail ballots as well as by the manual method, provided the feasibility of this procedure, with adequate safeguards, can be demonstrated by the submission of data not incorporated in the present record. As an alternative, the Board will consider holding a new manual election as early in the 1946 season as there is substantial reemployment.

In setting aside these elections, we are aware of the fact that the procedural defect arising from the absence of a master eligibility list is not applicable to the elections held among employees of the Independent Companies. However, the other defects based on uncertainty concerning the meaning of 25-day eligibility rule and the action taken respecting employees "temporarily laid off," are just as applicable to these elections as they are to the elections held among the employees in the CP&G unit. We are of the opinion that by reason of these difficulties, the elections conducted among employees of

the Independent Companies raise such a possibility of error that such elections should also be vacated and set aside. As a practical matter, this will be in harmony with our ruling regarding the elections in the CP&G unit and will avoid inconsistent disposition of the problems of the cannery industry.

Sometime prior to March 1, 1946, but after the issuance, and the receipt of copies thereof by the parties thereto, of the aforementioned Supplemental Decision of the Board, AFL served a demand upon the Association for a contract to replace the Master Agreement, which after the service of the said demand, was to terminate by its own terms on March 1, 1946. In its demand AFL stated, among other things, that it wanted "a contract on behalf of our organization that continues to give us exclusive bargaining rights and that affords us a union shop."

On or about March 25, 1946, the following agreement was entered into:

This Memorandum of Agreement, made and entered into this 25th day of March, 1946, by and between G. W. Hume Co., located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, A. F. of L., and Cannery Workers' Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., hereinafter referred to as Union,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. It shall be a condition of employment with the employer that all employees covered by this

agreement shall become and remain members of the Union in good standing. Present employees who are not as of the date of this agreement members of the Union must become members within ten (10) days from the date hereof. Any new employee shall be required within ten (10) days of the date of hiring to become a member of the Union and thereafter remain a member in good standing.

Persons who fail to maintain good standing in the Union in accordance with the By-Laws thereof shall be discharged within thirty-six (36) hours after the company is so notified by the Union.

In the hiring of additional employees, the employer shall give preference to unemployed members of the local Union provided such individuals have the necessary qualifications and are available within forty-eight (48) hours after being notified. As a basis for preferential consideration unemployed members of the local Union shall be required to present a clearance card from the local Union, evidencing the fact of their paid-up membership.

2. Any adjustment in wages, hours or conditions, which may hereafter be agreed upon by the parties, shall be effective as of March 1, 1946, and retroactive to that date.

The record shows that the parties to the foregoing contract intended it to be an agreement of indefinite duration, incorporating all the terms of the Master Agreement which were not inconsistent with the March 25, 1946, contract. In short, the parties intended it to be a new over-all agreement providing for a closed-shop plus the pertinent provisions of the Master Agreement.

In addition to all the foregoing, it is to be noted that after March 1, 1946, Hume admittedly permitted representatives of Local 22382 free access to the cannery for the purposes of collecting dues and soliciting membership but at the same time denied like privileges to representatives of CIO.

Analysis and Conclusions Concerning Events

Prior to March 25, 1946

1. The Discharges Under the Master Agreement.

There is no dispute as to the foregoing facts. The issue, as it arises from them turns on the questions whether, as a condition of continuous employment, (1) all employees on the seniority list, which included the "regular" and seasonal employees here involved, were required to become members of Local 22382 and (2) whether employees, once having taken out membership in the Union, were thereafter required to maintain such membership in good standing.²⁴

Both of these questions must be resolved in the negative. The Master Agreement clearly exempts employees on the seniority list from being required to obtain clearance slips as a condition for going to work from season to season and is wholly silent as to the "regular" or year round employees. The most it does with reference to the employees on the

²⁴The record indicates, although it does not clearly reflect, that all the discharged employees here involved had been members of Local 22382 up to June 1945, when they abandoned their membership.

seniority list is to require the employer to report to the local union, from time to time, the names of those in its employ who did not produce clearance slips on their resumption of work. This part of the agreement contains no language that can be construed to mean that any employee on the seniority list may not be put to work without a union clearance or that he must be a member in good standing or a member at all, to qualify for employment. Nor is there any provision in the Master Agreement that requires an employees who had joined a local union, to maintain his membership in good standing, as a condition of employment. The sole requirement that the agreement imposes upon the employer in this respect is to see that "new employees," as distinguished from employees on the seniority list, file applications for membership in the appropriate local union when they go to work and to notify the new employees that, under the Master Agreement, they must complete their application with the local union within 10 days. The employer's responsibility for the new employees' affiliation ends upon the making of such applications by them and the giving of such notices. The local union expressly assumes, under the terms of the Master Agreement, full responsibility for the new employees' affiliation with it from that point forward. The Master Agreement is likewise silent as to the obligations of the new employee to the local union after his application has been made at the time of his employment, except that within 10 days thereafter he must become a member. It imposes no other obli-

gations with respect to the employee's tenure of employment. At best, the Master Agreement is no more than a preferential hiring contract.²⁵

The employees here involved were discharged at the instance of Local 22382 because of their failure and refusal to pay dues to that organization and to obtain from it clearance slips, obtainable only by those in good financial standing. All of them were either "regular" year round employees or seasonal employees on the seniority list. None were required, under the clear terms of the Master Agreement, to carry or exhibit evidence of being in good standing in the local union. Those who had been members of Local 22382 had elected to abandon it. That was their right in the absence of a contractual obligation to maintain their membership.

The Master Agreement, to be sure, recognizes the right of union members to refuse to work with non-union employees and provides that such a refusal shall not constitute a breach of the agreement. AFL contends that this provision is tantamount to a requirement that every employee must maintain membership in good standing in the appropriate local union as a condition of employment. Even if such reasoning were sound, which it is not, the right is not absolute under the terms of the agreement. The right may not be exercised until the matter has been submitted to the grievance procedure of Section 8 of the Master Agreement and

²⁵The status of the contract of March 25, 1946, is separately discussed below.

has ultimately been disposed of, either by the Central Adjustment Board or by a named arbitrator. In any event, the Agreement sustains no such interpretation as that proposed by AFL. The contention is therefore without merit.

In this situation, it may be said that AFL was relying on that provision in picketing Hume's cannery and permitting no one to work therein without a clearance slip, but such reliance was wholly contrary to the terms of the agreement. AFL usurped the grievance procedure of Section 8, by its insistence that the employment of the persons here involved be terminated for failure and refusal to maintain membership in good standing in Local 22382. The Master Agreement lends no justification for the discharges here involved. The sole reason for the discharges was the refusal of the employee to comply with Hume's demand that they join or reinstate themselves in Local 22382 and thereafter remain in good financial standing, which position was brought about through AFL's threat of economic hardships to Hume if the employees did not comply.

In its brief, AFL appears to stress the compulsory check-off agreement entered into with Hume in August 1944, as a closed-shop agreement. This contention is without merit and it is not supported by the record. The agreement clearly was intended as a supplement to the Master Agreement. If it had any force as a closed-shop provision, it was completely abrogated by the memorandum of June 1945, amending the Master Agreement which was made

pursuant to a directive of the National War Labor Board, which provided for voluntary check-offs revocable at will. Moreover, by its language, the August 1944 agreement contains no provision that can be construed to compel every employee to be and remain a member in good standing in Local 22382. The agreement clearly applied only to the members of that organization and at most imposes an obligation on Hume to make deductions from the pay of union members and turn it over to Local 22382. If Hume failed to do this, the question was between Hume and Local 22382. Hume's failure still could not impose an obligation on a member to pay his dues. The agreement is also silent on the proposition that the employees must remain in good standing in Local 22382 as a condition of employment. In short, the agreement has no bearing on the issues here.

It has been found that no contractual relationship required the discharges. The discharges were brought about through coercion of Hume by AFL. Discharges thus brought about are not excused or exempted by the Act.²⁶ The discharges were discriminatory and designed to support and encourage membership in AFL and to discourage membership in any rival labor organization, and therefore interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act, and the undersigned so finds.

²⁶N.L.R.B. v. Star Publishing Company, 97 F. (2d) 465 (C.C.A. 9).

2. The Board's Jurisdiction versus Contract Provisions.

The respondents and AFL also argued that the Board should not assume jurisdiction over the controversy involving the discharges here considered in the face of the contractual provisions for the disposition of grievances through the Central Adjustment Board and, in event of a tie vote in that board, through a third party who would serve in the capacity of an arbitrator. The Master Agreement provides that a decision reached through such procedure shall be final and binding upon all parties.

Section 8 of the Master Agreement provides:

In addition to the power to adjust grievances referred to it by local unions or the Employer as hereinabove provided, and the determination of appeals in cases of contested discharge, the Adjustment Board shall have the power and responsibility to investigate and determine all matters arising under Section 3(a) hereof relating to the refusal of union members to work with non-union employees. In all such cases notice of the existence and nature of such dispute shall be submitted in writing to California Processors and Growers, Inc., by the local union, in addition to presentation to the Shop Committee and/or local business agent as hereinabove provided.

and further provides:

In addition to meetings called to consider specific disputes as herein provided, the Central Adjustment Board shall meet at least once a month, or at

other times determined by mutual agreement of the members thereof, for the purpose of considering any matters, in addition to the adjustment of grievances presented by any party hereto, that may relate to the interpretation or administration of the provisions of this agreement. All decisions of said Board in adjusting grievances, and all determinations of said Board relating to the interpretation or administration of this agreement shall be reduced to writing and shall be sent to each local union and to each Employer, party to this agreement. Adjustments or interpretations made in settlement of local disputes prior to submission to the Board shall not be binding upon the Central Board, but any adjustment or interpretation made by the Central Board shall be binding on all parties hereto.

In February 1946, the question concerning these discharges came before the Central Adjustment Board, not on the merits of the discharges themselves, but on the question of whether Hume might rehire the discharges without requiring clearance with Local 22382. On an even decision, it was determined to submit the question of the "closed shop" or "union shop" issue to an arbitrator to be appointed by the United States Conciliation Service from among the permanent staff members of that Service. In March 1946, the arbitrator so designated declined to act. At that time a charge had been pending before the Board and was under investigation. The Board did not assume jurisdiction over all the subject matter until March 27,

1946, when its complaint was issued, at least a week after the designee of the Conciliation Service had declined to serve.

Under such circumstances, it is not necessary to dispose of the technical question of a conflict between the exercise by the Board of its functions in this case and the operation of the terms of the Master Agreement. The question concerning the discharges and its consideration by the Board does not impinge upon any of the rights of any of the parties to the Master Agreement. It is the function of the Board to follow the mandate of the Act in the interest of the public welfare. Its power and duty to do so, expressed in Section 10(a) of the Act, is "exclusive, and . . . not . . . affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

Contractual provisions for the settlement of grievances or disputes are orderly procedures for the avoidance of interruptions to interstate commerce and trade, brought about by collective bargaining, and are encouraged by the Act. Whether the Board may override such provisions and, ignoring them, assume jurisdiction and determine question which might properly have been handled under the grievance procedure of a contract, is not here involved. Here the arbitration procedure had broken down and no steps have been taken to proceed further. Meanwhile, a question of unfair labor practices affecting commerce and the public welfare in a very material way has arisen. The Board

has a duty in such circumstances to resolve it and apply a remedy, especially in a case where, as here, the contract contains no justification for the discharges under consideration. Admittedly, the situation in the instant proceedings created by the demands of AFL that these employees be discharged regardless of the terms of the agreement, set up an obstruction to interstate commerce; but the manner in which Hume met the situation was violative of the Act for it deprived its employees of the rights guaranteed them by the Act. Without Board action, the situation has no prospects of being remedied and the existence of an unused remedial provision in a private agreement may not be allowed to paralyze the Board's statutory grant of exclusive jurisdiction.²⁷

3. Contentions That the Board Has Heretofore Determined the "Closed-Shop" Issue

The Association and AFL vigorously contend that the Board, in its Supplemental Decision in the Matter of Bercut-Richards Packing Company, et al., has foreclosed any question as to the closed-shop character of the Master Agreement and has given the agreement official sanction as a closed-shop contract when it said

. . . No legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date . . .

²⁷Cf. *N.L.R.B. v. Newark Morning Ledger Co.*, 120 F. (2d) 266 (on re-argument) (C.C.A. 3), cert. den. 314 U. S. 693.

The language of the Board carries no such import. In the first instance, the nature of the Supplemental Decision was such that it could in no way be regarded as a determination of anything beyond the fact that the elections, as contended, did not afford the employees a full opportunity to make a free choice and that under the circumstances the elections must be set aside and others held at an early date. The position of Board's counsel that the language was intended to advise the parties of their broad over-all legal rights and obligations in the interim is sound. But, for the purpose of setting at rest the contention of the Association and AFL that the language is of the nature of a commitment by the Board or of a prejudgment on its part of the issues involved in the instant proceeding, it must be and it is found to be without merit. Through the development of machinery for "union security," the term "closed-shop" has taken on a generic meaning, applied generally by laymen, to any provision of a contract that contains an element of compulsion in the matter of becoming a member of the contracting union or maintaining membership in good standing therein. In the Matter of Bercut-Richards Packing Company, et al., the Master Agreement was not under investigation. The Board there was not confronted with the problem of evaluating it, as it is here. In the proceeding out of which the Supplemental Decision arose, the term "closed-shop" had been bandied about. Each party thereto commented on it and each recognized that the Master Agreement contained some

elements of compelling at least certain employees to become members of a local union. The Board, on prior occasions, has been confronted with other contracts containing provisions for compulsory membership, that have expired in the midst of representation proceedings.²⁸ It would appear that the language used by the Board was but a warning against repetition of such conduct of employers in other cases which had previously been found to be violative of the Act. It makes no difference whether the provision is one for maintenance of membership, a union shop, a closed-shop, or a preferential shop—all of them come within the layman's broad generic term "closed-shop provisions." It cannot be found that the language was intended to be a determination of the exact character of the contract.

3. Contentions Relative to Interpretation of Master Agreement by Parties Thereto.

The contentions of the respondents and AFL that during the life of the Master Agreement the parties thereto had interpreted it as requiring membership in good standing in an appropriate local union as a condition of employment are not supported by the record. Prior to about November 1945, there appears to have been some uncertainty with Hume as to the application of the agreement in requiring membership in good standing as a condition of employment. There is some evidence that Assistant

²⁸See Matter of Phelps Dodge Copper Products Corp., 63 N.L.R.B. 686, 687.

Superintendent Gallardo, at the instance of Local 22382, had, from time to time, between 1941 and 1944, informed employees that they could not work there unless they had clearances with Local 22382 and that such non-union employees either did not report for work again or obtained clearances. R. M. Tomson, secretary-treasurer and business manager of Local 22382 from about July 1942 to June 1945, and president of the Council from about February 1944 to June 1945, admitted on the witness stand that the only times the Council or Local 22382 had asserted that the Master Agreement was a closed-shop contract was when "they thought they could get away with it." He testified that the Council always sought a closed-shop contract but that the Association would never agree to the granting of one.

However, with the amendments to the Master Agreement in the June 1945 memorandum, made pursuant to a National War Labor Board directive, the situation began to clear itself and early in November 1945, on a direct inquiry by Hume to Clough, a field representative of the Association, Hume was informed by Clough that the Master Agreement contained no compulsion on the employees who were on the seniority list to become or remain members of Local 22382. Following this advice, according to the testimony of General Manager Birchall above quoted, Hume consistently followed Clough's interpretation, advised Local 22382 of its position and thereafter refused to accede to any of that union's demands for discharges because of failure to main-

tain membership in good standing in it, until the discharges here involved took place.

That the Association does not and has not regarded the Master Agreement as either a "closed shop agreement" or a "maintenance of membership agreement," runs through the entire record and is confirmed, not only by Clough's advice to Hume but by the position taken by the Association before the Central Adjustment Board in February 1946, and also before this Board when, during the oral argument in Washington, D. C., before the Board in the Matter of Bercut-Richards Packing Company, et al., on January 24, 1946, respondents' counsel, in response to a question put to him by Board Member Reilly, stated:

... The contract we have provides that initial employment shall call for affiliation with the union, but the contract itself does not expressly require that we discharge people for not maintaining good standing in the union.

A. F. of L. maintains the side that we have a union shop and should discharge people. We are in that conflicting position. The contract does not express it. The A. F. of L. observes us as a union shop and they have picketed us for not doing so. That contract is in effect until the 28th of February. It is our position that it is in effect, because the Board assumed that it was in its decision; although I understand some question has been raised to that. We assume it is in effect.

From the foregoing, the undersigned finds that the contract was not, either by mutual consent or custom, regarded by the parties as one requiring membership in good standing in the local union as a condition of employment, but that it was, in accordance with its clear terms as heretofore found, devoid of any provision requiring employees on the seniority list to be or become members of the local union, or requiring any employee to maintain his membership in the union after becoming a member.

The March 25, 1946, Contract

1. Execution Thereof During Pendency of Representation Proceeding

On February 15, 1946, the Board issued its order setting aside the elections in the Matter of Bercut-Richards Packing Company, et al., for reasons set forth in its Supplemental Decision of that date. The Board therein stated that new elections would be conducted at an early date. The decision also recites

The current AFL contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles, the employers may not pending a new election, give preferential treatment to any of the labor organizations involved, although they may recog-

nize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Subsection 8(3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

Notwithstanding this admonition by the Board, Hume entered into the contract set out at length in Section III A above, on or about March 25, 1946.

The respondents and AFL contend that since the Board had set aside the elections in *Matter of Bercut-Richards Packing Company, et al.*, Hume was not only free "to deal with and recognize the AFL as the exclusive representative of the employees but the employer is obligated to do so." By a process of elimination, AFL reasons that since no other selection has been made, it remains the choice of the majority and therefore is entitled to be recognized and dealt with as such, on the theory that once a majority representative status has been established, the representative continues until another representative had been selected and certified as such by the Board. The decisions cited by AFL in its brief in support of its contention are directed to this point alone. They do not touch on the situa-

tion that is created when a question concerning representation has arisen between rival organizations and the matter is pending before the Board for determination. Because they are not in point, it would serve no useful purpose to here discuss them.

It is undisputed that at the time the agreement of March 25, 1946, was executed, a proceeding was pending before the Board for the determination and certification of the collective bargaining representative of not only Hume's employees but also the employees of all the members of the Association as a single appropriate unit. The Board had determined that the appropriate unit consists of all the production and maintenance employees of the members of the Association, with certain specified exceptions, and the proceeding had reached the stage where an election had been held and ultimately set aside at the insistence of AFL. While the voting at the election determined nothing, it reflected that CIO was the preferred representative of a very substantial number of the employees of the Association's members, which included Hume. The question then pending was a very real one as to who represented the employees. It still is and it cannot be determined until the Board's processes have been exhausted in a valid election or elections.

Hume and AFL were not free to enter into a collective bargaining contract merely because the Board had set aside the elections. An election is only one step in the investigatory processes of the Board to determine who represents the employees.

The process starts with the filing of a petition. It then goes through the preliminary field investigation on which rests the decision as to whether to proceed further. If further proceedings are to be taken, a hearing is held at which the parties advance their ideas as to the appropriateness of the unit and other pertinent matters. The Board, after considering the record made at the hearing, either decides to proceed no further or to conduct an election by secret ballot to determine the desires of the employees in the unit it has found to be appropriate. After the election, the Board considers all questions raised as to the validity of the election. If the Board finds that the election was conducted in such a manner, or under such circumstances, that it does not reflect a free expression of choice of those entitled to participate therein, the Board may, and usually does, set it aside and orders a new election. After a valid election has been had, the Board takes the final steps of certifying the union shown to have been selected by a majority of those voting.

The representation proceeding concerning Hume's employee's together with those of the other members of the Association, having been set in motion, it remains a bar to new collective bargaining contracts containing exclusive recognition between Hume and any labor organization until the entire proceeding has run its course. It was therefore Hume's obligation under the Act to refuse to deal with any labor organization as the exclusive representative of its employees. The fact that Hume be-

lieved AFL to be the majority representative of the employees at the time of the execution of the March 25, 1946, contract is not sufficient. The question of the majority representation was before the Board and it was the Board's, and not Hume's function to resolve that question. By taking upon itself to determine the question of representation, Hume committed an unfair labor practice by lending prestige to AFL through the process of contracting with it while the employees were making their selection.

In its order of February 15, 1946, setting aside the elections, the Board had before it ample precedent for its pronouncement that, pending the holding of subsequent elections and a determination of their results, no new agreement of an exclusive bargaining character might be entered into by any of the employers involved in Matter of Bercut-Richards Packing Company, et al., with any union. This was no more than a statement of the established legal restrictions surrounding any employer and rival unions in similar circumstances.

In Matter of Elastic Stop Nut Corp., 51 N.L.R.B. 694, enf'd. 142 F. (2d) 371 (C.C.A. 8) cert. den. 323 U. S. 722, the Board entered an 8(2) cease and desist order largely bottomed on recognition of one of two contending unions under similar circumstances, and used the following language at page 702:

A neutral employer, when faced with the conflicting representation claims of two rival unions, would not negotiate a contract with one

of them until its right to be recognized as the collective bargaining representative had been finally determined under the procedures set up under the Act.

In *Matter of Phelps Dodge Corp. etc.*, 63 N.L.R.B. 686, the Board again enunciated the same principle and held discharges under a closed-shop contract—extended after maturity to hold over during representation proceedings—to be in violation of Section 8(3), saying at page 687:

We are of the opinion that if, during the pendency of an election directed by the Board to resolve a question concerning representation, an employer extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representative or employees are required to become or remain members thereof as a condition of employment.

In the *Matter of Midwest Piping and Supply Co., Inc.*, 63 N.L.R.B. 1060, the respondent executed a union shop agreement with one of two contending unions while a representation petition filed by the other union was pending. The Board said at pages 1070-71:

The respondent knew, at the time that the contract was executed, that there existed a real question concerning the representation of the employees in question. The record shows that both the Steamfitters and the Steelworkers had

vigorously campaigned in the plant, had apprised the respondent of their conflicting majority representation claims, and had filed with the Board conflicting petitions, which are still pending, alleging the existence of a question concerning the representation of the employees covered by the agreement. Under such circumstances, the Congress has clothed the Board with the exclusive power to investigate and determine representatives for the purposes of collective bargaining. In the exercise of this power, the Board usually makes such determination, after a proper hearing and at a proper time, by permitting employees freely to select their bargaining representative by secret ballot. In this case, however, the respondent elected to disregard the orderly representative procedure set up by the Board under the Act, for which both unions had theretofore petitioned the Board, and to arrogate to itself the resolution of the representation dispute against the Steelworkers and in favor of the Steamfitters. In our opinion such conduct by the respondent contravenes the letter and the spirit of the Act, and leads to those very labor disputes affecting commerce which the Board's administrative procedure is designed to prevent.

We further find that the respondent's aforementioned conduct also constitutes a breach of its obligation of neutrality. As we have previously held, a neutral employer, on being confronted with conflicting representation claims

by two rival unions, "would not negotiate a contract with one of them until its right to be recognized as the collective bargaining representative had been finally determined under the procedure set up under the Act." Here, the respondent knew that the Board already had jurisdiction over the existing question concerning the representation of the employees covered by the contract, and that, in accordance with its usual practice, the Board would not proceed to a resolution of that question until it had passed upon the then pending original complaint herein, hearing on which had already been concluded. That no unfair labor practices are found herein on the original complaint does not alter the effect of the respondent's later breach of its neutrality obligation.

The same general rule is inherent in the Board's numerous decisions that such a contract entered into after representation proceedings have been instituted, is no bar. See *Radio Corporation of America*, 63 N.L.R.B. 235.²⁹

It is also apparent that the March 25 contract sets up the employees of Hume as a separate appropriate bargaining unit despite the fact that the Board had already found that the employees of the

²⁹See also, *Matter of John Englehorn & Sons*, 42 N.L.R.B. 886, 875-876; *enf'd.* 134 F. (2d) 553, 556 (C.C.A. 3); *Matter of Southern Wood Preserving Co.*, 45 N.L.R.B. 230, 238, *enf'd.* 135 F. (2d) 606, 607 (C.C.A. 5); *Phelps Dodge Corp.*, *supra*.

members of the Association constituted the appropriate bargaining unit. In this respect too, the March 25 agreement must fall since it fails to comply with the requirements of the proviso in Section 8(3) of the Act. At the time of the hearing Hume was still a member of the Association.

By entering into the closed-shop contract of March 25, 1946, Hume created a condition of discrimination in regard to the hire and tenure and terms or conditions of employment of its employees, which had the coercive effect of encouraging membership in Local 22382 and discouraging membership in CIO. It is therefore found that the foregoing conduct of Hume was, in fact, a discrimination in regard to the hire and tenure and terms or conditions of employment of its employees because it compelled its employees to become and remain members of Local 22382, and, therefore interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Execution Thereof Under Duress

In a prior section of this report, the subject of coercion and the exigencies of the business as a defense against conduct prohibited by the Act, has been dealt with. Here it is again raised with reference to the pressure exerted by AFL to compel the execution of the March 25, 1946, contract by Hume. The circumstances and the reasons that actually impelled the execution of the contract are both reflected in the following uncontradicted and

credible testimony of President Hume while under examination by respondents' counsel:

Q. Before March 1, 1946, were you given a demand by the union, that is, by the AFL union, that you sign up an exclusive bargaining contract with them, with closed shop provisions?

A. We were asked to, yes.

Q. Was that asking accompanied by any statement as to what would happen if you did not comply with that request?

A. It was intimated.

Q. That what?

A. That we would not be able to operate.

Q. In your opinion, had you not entered into the contract which you subsequently did, with that union, would your plant have been able to operate?

A. We know that it would not, because we did not enter into any agreement until the absolute deadline. The trucks were tied up, so therefore we were forced to enter into an agreement.

Q. The agreement that you entered into under those circumstances was made on what date?

A. March 25, 1946.

Q. Between March 1, 1946, and March 25, 1946, what occurred in connection with the operation of the plant or the stoppage of operation of the plant?

A. Trucks were not allowed to come in or out of the warehouse. We were not operating at the time. The picket was placed down by the warehouse, so that no trucks could come in or out.

* * * * *

Q. Between March 1, 1946, and March 25, 1946, the bulk of the work on operations there would con-

sist of shipments going out of the plant from the warehouse? A. That is correct.

Q. And those shipments of course are customarily hauled by truck, are they?

A. Partially rail, partially truck.

Q. Were any shipments during that period made out of the plant by way of rail? A. Yes.

Q. Were any shipments during that period made out of the plant by way of trucks? A. No.

Q. You say there was a picket line maintained during that period? A. Correct.

Q. By whom? A. The AFL.

Q. Did the Teamsters who were driving the trucks observe that picket line? A. They did.

Q. None of them went through? A. No.

Q. You knew that if the picket line was maintained, that no incoming trucks could haul produce into the plant, is that correct?

A. That is correct.

* * * * * *

Q. Did the company commence canning operations on March 25th and carry on continuously thereafter? A. We did.

This testimony clearly indicates that the sole reason Hume entered into the contract of March 25, 1946, was to escape the penalties that were implicit in the threats of AFL, and not because AFL was the majority representative of the employees.³⁰

³⁰President Hume admitted that he had no direct evidence that AFL represented the majority of the employees on March 25, 1946, but that he assumed that it represented them because "we had always been AFL."

In other words, Hume entered into the contract because it feared that by refusing to do so it would be visited with economic loss. As in the case of the discharges under like pressure, the choice selected was without the pale of the law. Between the penalties attached to a disregard of the obligation imposed by the Act to permit the Board, after it had assumed jurisdiction, to determine the question of representation, and the economic hardships that might develop from the threat of AFL to bar Hume from the receipt of merchandise, Hume elected to bow to the latter and accept the former. Hume therefore must be directed to reverse its position to conform to the requirements of the law. As the United States Circuit Court of Appeals for the Ninth Circuit carefully pointed out in *N.L.R.B. v. Star Publishing Co.*, 97 F. (2d) 465, "The Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by an employer." This rule has also been followed in numerous other cases involving employers who have refused to obey the mandate of the Act because of pressure by one union which was party to a jurisdictional labor dispute. The statute "permits no immunity because of undue hardship or economic pressure imposed on the employer. It leaves no room for the appease-

ment of hostile interests . . .³¹ A contrary principle making enforcement of the provisions of the Act dependent upon considerations of the economic hardships imposed upon an employer would, as here, nullify the right of employees, guaranteed to them by the Act, to bargain through representatives of their own choosing. Representatives for the purpose of collective bargaining under such a principle would be determined by the degree of economic pressure rival unions or even one's customers would be able to bring to bear upon an employer, rather than by the free choice of a majority of the employees.³² Such a defense is without merit and as

³¹See *McQuay-Norris Mfg. Co. v. N.L.R.B.*, 116 F. (2d) 748, 752 (C.C.A. 7), cert. den. 313 U. S. 565. See also *N.L.R.B. v. Isthmian Steamship Co.*, 126 F. (2d) 598, 599 (C.C.A. 2); *N.L.R.B. v. Hudson Motor Car Co.*, 128 F. (2d) 528, 532 (C.C.A. 6); *N.L.R.B. v. John Englehorn Sons*, 134 F. (2d) 553, 557 (C.C.A. 3); *South Atlantic Steamship Co. v. N.L.R.B.*, 116 F. (2d) 480, 481 (C.C.A. 5) cert. den. 313 U. S. 582; *N.L.R.B. v. Gluek Brewing Co., et al.*, 144 F. (2d) 847, 853 (C.C.A. 8); *Warehousemen's Union v. N.L.R.B.*, 121 F. (2d) 84, 87 (App. D.C.) cert. den. 314 U. S. 674; *N.L.R.B. v. National Broadcasting Company, et al.*, 150 F. (2d) 895 (C.C.A. 2).

³²In the *Matter of A. J. Showalter Company*, 64 N.L.R.B. No. 96, the Board held that the threat of a loss of business, sufficient even to cause the plant to be shut down, did not justify the president in telling his employees of the threat and the effect it might have on their jobs if they continued to remain members of a certain union. In the recent case of *Matter of Toledo Desk & Fixture Company*, 65 N.L.R.B. No. 193, the same principle was again announced when the employer urged that, to recognize the C.I.O. would deprive it of the right to use the A. F. of L. label and thereby render its products unsalable in their customary markets.

previously stated, it must be and it is found that the contract of March 25, 1946, was entered into under circumstances prohibited by the Act and that thereby Hume has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that Hume by (1) urging its employees to become and remain members in good standing in Local 22382, (2) granting, after March 1, 1946, to representatives of AFL access to its cannery while denying like privilege to representatives of CIO, and (3) requiring, as a condition of employment, the employees on the seniority list to obtain new clearance slips from Local 22382, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Liability of the Association for the Unfair Labor Practices Committed by Hume

The complaint alleged that by virtue of the fact that the Association, among other things, advised its members relative to their respective labor policies and other matters incident thereto, including the negotiation and execution of collective bargaining contracts covering the employees of its members, the Association is an employer within the meaning of the Act. The joint answer of the respondents neither admitted nor denied these allegations although at the hearing, the Association concedes that it is an employer within the meaning of the Act. The Association cannot be charged *ipso facto*

with violating the Act, because one of its members may have committed an unfair labor practice without some showing of participation therein by the Association. The facts under Section III A and B show that Clough, a field representative of the Association, attended a meeting at the Hume cannery in August 1945, which was also attended by Hume's "regular" employees, several representatives of Local 22382, about 7 or 8 representatives of Teamsters, and by Gallardo, and Fordham representing Hume, and that Clough "asked" the assembled employees to clear through "the Teamsters' Organization in order to keep the plant operating in a peaceful manner so they could pack their peaches." According to the credible testimony of Heagle, Clough, in answer to a question put to him by Heagle, as to whether the "regular" employees "would be forced" to sign due check-off authorizations if they cleared as suggested, Clough replied in the negative. The record shows that none of the "regulars" signed any clearance slips in the Teamsters, in response to this request, but that they did execute new clearance slips in Local 22382 and the cannery continued in uninterrupted operation until November 19, 1945. Moreover, none of the "regulars" executed new check-off authorizations after they had executed the revocations in June 1945. It is a fact that those "regulars" who did not remain in good standing in Local 22382 were later discharged by Hume at the behest of that organization, but those discharges were not the result of any unfair labor practices of the Association. Clough's

official status with the Association was not developed at the hearing beyond the statement by counsel for the Association that he was an "employee" and the statement of Birchall that, so far as he knew, Clough was a "field representative." Such statements, uncontraverted, are insufficient to attach to the Association responsibility for whatever Clough may have done at the August 1945 meeting when the peach canning season was being threatened by the demands of AFL that went beyond the terms of the Master Agreement. Moreover, assuming that Clough had authority to bind the Association, Clough's statements on that occasion must be read in the atmosphere of the occasion. He did not threaten anyone, but he did appeal to the employees for cooperation and, in explaining that no check-off of dues would be involved, pointed out, in effect, that clearing through Teamsters would be no more than a gesture. That Clough nor the Association entertained an idea of compelling such action is clearly shown by the telephone conversation of early November 1945, between President Hume, with a representative of Local 22382 present at Hume's end, wherein Clough advised Hume not to discharge any employee on the seniority list because he was not in good standing with Local 22382. The undersigned is convinced, and finds, that the evidence is insufficient to base a finding that the Association violated the Act by the acts and statements of Clough, as described above, nor does the evidence show that the Association participated in the unfair labor practice committed by Hume. Accordingly,

the undersigned will recommend that the allegations of the complaint with respect to the Association be dismissed.

V. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Hume set forth in Section III above, occurring in connection with the operations of Hume described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to be unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The Remedy

Having found that Hume has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take the following affirmative action which it is found will effectuate the policies of the Act.

Since it has been found that Hume discriminated in regard to the hire and tenure of employment of the 18 persons whose names appear on Appendix B, hereto annexed, by discharging them and thereafter refusing to reemploy some of them,³³ because they,

³³The record is not clear how many "regular" employees have been rehired since November 20, 1945.

and each of them, had failed and refused to remain members in good standing in Local 22382, the undersigned will recommend that the respondent offer to each of them who has not been heretofore reinstated immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

Since it has been found that Hume discriminated in regard to the hire and tenure of employment of Clarence McVay, a seasonal employee, the undersigned will recommend that Hume offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of such discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period from December 7, 1945, the date of his discharge, to the date of Hume's offer of reinstatement to him, less his net earnings³⁴ during said

³⁴By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

period. However, since Hume's business is seasonal, it is possible that the cannery may not be in operation at the time said offer of reinstatement is made; in that event the offer of reinstatement of McVay shall become effective at such time as Hume's seasonal business next begins. Moreover, since McVay is a seasonal employee, the undersigned will not recommend back pay for the period in which he normally would not have worked in Hume's cannery, nor will the undersigned recommend the deduction as earnings of any monies earned elsewhere by him during such period.

Since it has been found that Clemie Robinson, Monroe Robinson, Thomas L. Broll, Ruth Waite, Agnes Hopkins, Myrtle Brown, Genevieve Alsup, Marguerite Watts, Clifford C. Luther and R. E. Rearick (the persons whose names appear on Appendix C, hereto annexed) are seasonal employees and had been reinstated by Hume prior to the hearing herein, the undersigned will recommend that Hume make them whole for any loss of pay they may have suffered by reason of Hume's discrimination against him, by payment to each of them a sum of money equal to the amount he or she normally would have earned as wages during the period from November 21, 1945, the date of their discharges, to the date when each of them was reinstated by Hume, less his or her net earnings during such period. Since Hume's business is seasonal in nature and since the persons named in this paragraph are seasonal employees, the undersigned will not recommend back pay for the periods in which

they normally would not have worked in Hume's cannery, nor will the undersigned recommend the deductions as earnings of any monies earned elsewhere by them during such periods.

At the time of the hearing Oscar Johnson, a "regular" employee, was in the military forces of the United States and is accordingly not available for immediate reinstatement. Therefore, the undersigned will recommend that Hume, upon application by Johnson within ninety (90) days after his discharge from the armed forces of the United States, offer him reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. The undersigned will further recommend that Hume make Johnson whole for any loss of earnings he may have suffered by reason of Hume's discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period: (1) between November 20, 1945, the date of his discharge, and the date of his entry in the armed forces of the United States and (2) between the date five (5) days after Johnson's timely application for reinstatement by Hume and the actual offer of reinstatement, less his net earnings during these periods.

Since it has been found that A. E. Berry, Ernest G. Bishop, Vider Bjorcklund, Jasper J. Bobb, Harold Dillard, William J. Ely, Clyde Faddis, H. F. Frazier, Harlie Frischneckt, Irwin C. Heagle, T. Boyd McKamey, Archie Miller, A. E. Moore, Harry E. Pierson, Abe Thiessen, Neal Watts, and R. B.

White (the persons whose names appear on Appendix B, hereto annexed), are "regular" employees and were also discriminatorily discharged by Hume, and that an undetermined number of them have been reinstated by Hume, the undersigned will recommend that Hume make each of them whole for any loss of pay he may have suffered by reason of Hume's discrimination, by payment to each of a sum of money equal to the amount he normally would have earned as wages during the period from the date of the respective discharges to the date when each of them was reinstated by Hume, or shall hereinafter be offered reinstatement, less his net earnings during such period.

It has been found that by reason of the demands of AFL for changes in the Master Agreement, made prior to March 1, 1946, that contract expired by its own terms on March 1, 1946, and that the contract of March 25, 1946, was intended by the parties thereto to be a contract of indefinite duration, to incorporate all the terms of the Master Agreement, and to be a new over-all agreement embodying the terms of the March 25, 1946, contract plus the provisions of the Master Agreement. Since it has been found that the March 25, 1946, contract constituted an unfair labor practice on the part of Hume, the undersigned will recommend that Hume be ordered to cease and desist from giving effect to said contract and such other contracts, understandings, supplements, extensions, or other agreements as may have been related thereto, provided, however, in so doing, Hume shall not be required or permitted to

vary those provisions of such contracts, understandings, supplements, extensions or other agreements which establish wages, hours of employment, rates of pay, seniority, or other substantial rights of its employees, until such time as a new contract is entered into with an exclusive collective bargaining representative of its employees duly certified as such representative by the Board.

In acceding to AFL's demand for the discharge of the 29 persons whose names appear on Appendices B and C, hereto annexed, Hume violated Section 8 (3) of the Act. Normally in cases in which an employer has unlawfully discriminated against an employee by discharging him, in addition to affirmative relief, the Board orders the employer to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. In the instant case, however, Hume discharged the 29 persons not to satisfy any purpose of its own but, rather, yielded to the pressure of AFL who refused to allow the cannery to operate because the said 29 persons were not in good standing with Local 22382. Under such circumstances, and in view of the absence of any evidence that danger of other unfair labor practices is to be anticipated from Hume's conduct in the past, the undersigned will not recommend that Hume be enjoined from the commission of any and all unfair labor practices. Nevertheless, the undersigned will recommend that Hume be ordered to cease and desist from the unfair labor practice herein found.³⁵

³⁵See Matter of American Car and Foundry Company, 66 N.L.R.B. No. 129.

Since it has been found that the evidence does not support the allegations of the complaint that the Association committed unfair labor practices, the undersigned will recommend that the allegations of the complaint with respect to the Association be dismissed.

Since John M. Smith did not appear at the hearing and no evidence was introduced with respect to his status, the undersigned will recommend that the allegations of the complaint with respect to John M. Smith be dismissed without prejudice.

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, California State Council of Cannery Workers, affiliated with the American Federation of Labor, and Cannery Workers Union, Local 22382, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the 29 persons whose names appear on Appendices B and C, hereto annexed, thereby encouraging membership in certain affili-

ates of the American Federation of Labor and discouraging membership in Food, Tobacco, Agricultural and Allied Workers of America, affiliated with the Congress of Industrial Organizations, and other labor organizations, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. By discriminating in regard to the hire and tenure and terms or conditions of employment of its employees, through the medium of the illegal contract of March 25, 1946, with Cannery Workers Union, Local 22382, and California State Council of Cannery Workers, both affiliated with the American Federation of Labor, to encourage membership in that organization and discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. California Processors and Growers, Inc., did not violate the Act as alleged in the complaint.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, G. W. Hume Company, Turlock, California, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Recognizing the Cannery Workers Union, Local 22382, and California State Council of Cannery Workers, both organizations being affiliated with the American Federation of Labor, as the exclusive representatives of its employees for the purposes of collective bargaining unless and until said organizations, or either of them, shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Workers and Cannery Workers Union, Local 22382, both organizations being affiliated with American Federation of Labor, or to any extension, renewal, modification or supplement thereto, or to any superseding contract with those labor organizations, or any other labor organization or affiliate thereof, provided, however, in so doing, Hume shall not be required or permitted to vary those provisions of such contracts, understandings, supplements, extensions, or other agreements which establishes wages, hours of employment, rates of pay, seniority, or other substantial rights of its employees unless and until said

organizations, or either of them, shall be certified by the National Labor Relations Board as the representatives of Hume's employees;

(c) Discouraging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(d) Encouraging membership in Federal Labor Union Local 22382, or any other labor organization, by yielding to pressure from that organization, or other pressure, through discharge or refusal to reinstate any employee or through any other form of discrimination in regard to hire or tenure of employment or any term or condition of employment.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to the persons whose names appear on Appendices B and C, hereto annexed, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges in the manner set forth in "The remedy";

(b) Make whole in the manner set forth in "The remedy" the persons whose names appear on Appendices B and C, hereto annexed, for any loss they may have suffered;

(c) Withdraw and withhold all recognition from California State Council of Cannery Workers and Cannery Workers Union, Local 22382, both organizations being affiliated with the American Federation of Labor, as the exclusive representatives of its employees for the purposes of collective bargaining with respect to the rates of pay, wages, hours of employment and other conditions of employment unless and until said organizations, or either of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(d) Post at its Turlock, California, cannery copies of the notice attached hereto and marked Appendix D. Copies of the notice to be furnished by the Regional Director for the Twentieth Region, after being duly signed by the Hume representatives, shall be posted by Hume immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Hume to insure that said notices are not altered, defaced or covered by any other material;

(e) File with the Regional Director for the Twentieth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which Hume has complied with the foregoing recommendations.

It is further recommended that unless Hume notifies said Regional Director in writing within ten

(10) days from the receipt of this Intermediate Report that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Hume to take the action aforesaid.

It is further recommended that the complaint with respect to the California Processors and Growers, Inc., be dismissed.

It is further recommended that the complaint with respect to the discharge of John M. Smith be dismissed without prejudice.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he replies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue

orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

/s/ HOWARD MYERS,
Trial Examiner.

Dated: May 20, 1946.

Appendix A

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Clarence McVay
H. F. Frazier	Ruth Waite
Harlie Frischknecht	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

Appendix B

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	Oscar Johnson
Vider Bjorklund	T. Boyd McKamey
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White

Appendix C

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Clarence McVay	Clifford C. Luther
Ruth Waite	R. E. Rearick
Agnes Hopkins	

Appendix D

Notice to All Employees

Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to Clarence McVay and Oscar Johnson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and priv-

ileges enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

We Will Offer to those of the employees named below who have not been reinstated already, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Archie Miller
Jasper J. Bobb	A. E. Moore
Harold Dillard	Harry E. Pierson
Wm. J. Ely	Abe Thiessen
Clyde Faddis	Neal Watts
H. F. Frazier	R. B. White
Harlie Frischknecht	

We Will make whole the following for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not encourage membership in Cannery Workers Union, Local 22382, or in any other labor organization, by yielding to pressure from that or any other labor organization, or other pressure,

through discharges or refusal to reinstate any employee or through any other form of discrimination in regard to hire or tenure of employment or any term or condition of employment.

All our employees are free to become or remain members of Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY

(Employer)

By

(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11693

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

G. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, G. W. Hume Company, Turlock, California, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of G. W. Hume Company and California Processors & Growers, Inc. and Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O. and International Brotherhood of Teamsters, Chauffeurs, Warehouse-

men and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the Contract, Case No. 20-C-1391”.

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on October 31, 1946, duly issued an order directed to the respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, G. W. Hume Company, Turlock, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Cannery Workers Union, Local 22382, A. F. of L., and California State

Council of Cannery Unions, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with those labor organizations, or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of its employees;

(c) Discharging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or encouraging or discouraging membership in any labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization, to

bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Clarence McVay and to the employees whose names appear in Appendix B of the Intermediate Report, attached hereto immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, in the manner set forth in Section VI of the Intermediate Report, entitled "The Remedy";

(b) Make whole the employees whose names appear in Appendices B and C of the Intermediate Report for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in the aforementioned Remedy Section of the Intermediate Report;

(c) Withdraw and withhold all recognition from California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organization or organizations shall have been certified by the National

Labor Relations Board as the representatives of such employees;

(d) Post at its cannery at Turlock, California, copies of the notice attached hereto, marked "Appendix A."⁶ Copies of the notice, to be furnished by the Regional Director for the Twentieth Regions, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by its for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region, in writing within ten (10) days from the date of this Order, what steps the respondent Hume has taken to comply herewith.

(3) On October 31, 1946, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, includ-

⁶In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

ing the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondent, marked "Appendix A", shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to All Employees, Pursuant to a Decree of the United States Circuit Court of Appeals, enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:"

NATIONAL LABOR

RELATIONS BOARD,

/s/ A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C., this 18th day of July 1947.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to those of the employees named below who have not been reinstated, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Oscar Johnson
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Clarence McVay
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White
Irwin C. Heagle	

We Will make whole the following named employees for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not recognize the Cannery Workers Union, Local 22382, A. F. of L., and California States Council of Cannery Unions, A. F. of L., as the exclusive representatives of our employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees;

We Will Not give effect to our contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or encourage or discourage membership in any other labor organization of our employees, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in

the exercise of the right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. All our employees are free to become or remain members of Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment of any employee because of his membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY,
Employer.

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	Oscar Johnson
Vider Bjorklund	T. Boyd McKamey
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White

Appendix C

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Clarence McVay	Clifford C. Luther
Ruth Waite	R. E. Rearick
Agnes Hopkins	

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, Petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made

therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 18th day of July 1947.

[Seal] /s/ KATHRYN B. HARRELL,
Notary Public, District of
Columbia.

My Commission Expires February 29, 1952.

[Endorsed]: Filed July 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

The Board submits the following statement of points upon which it intends to rely in the above-entitled proceeding:

I.

The Board's findings of fact that respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the National Labor Relations Act are supported by substantial evidence.

II.

The Board's order is valid under the Act.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations
Board.

Dated at Washington, D. C., this 18th day of July, 1947.

CCA No. 11693

Notice of Filing Petition of N.L.R.B. for
Enforcement of Its Order

United States of America—ss.

The President of the United States of America:

To: G. W. Hume & California Processors & Growers, Inc., Turlock, Calif., Food, Tobacco, Agricultural & Allied Workers of America, CIO, 150 Golden Gate Avenue, San Francisco, Calif., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Calif. Council of Cannery Unions, Att.: Mr. Mathew O. Tobriner, 1035 Russ Bldg., San Francisco, Calif.,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 23rd day of July, 1947, a petition of the National Labor Relations Board for enforcement of its order entered on October 31, 1946, in a proceeding known upon the records of the said Board as "In the Matter of G. W. Hume Company and California Processors & Growers, Inc., and Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F.

of L., and California State Council of Cannery Unions, A. F. of L., Case No. 20-C-1391," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Return on Service of Writ

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Order for enforcement of order of the National Labor Relations Board on the therein-named G. W. Hume & California Processors and Growers, Inc., Turlock, California, by handing to and leaving a true and correct copy thereof with R. G. Hume, President of G. W. Hume & California Processors and Growers, Inc., personally at Turlock, California, in said District on the 30th day of July, 1947.

GEORGE VICE,
U. S. Marshal.

By /s/ WESLEY EIRCH,
Deputy.

Return on Service of Writ

United States of America,

Northern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., by handing to and leaving a true and correct copy thereof with Mrs. Roberta Montgomery as International Representative of the Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., personally at Oakland, California, in said District on the 30th day of July, A.D. 1947.

GEORGE VICE,

U. S. Marshal.

By /s/ HERBERT R. COLE,
Deputy.

Return on Service of Writ

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Calif. Council of Cannery Unions, by handing to and leaving a true and correct copy thereof with Mathew O. Tobriner, Attorney, personally at San Francisco, Calif., in said District on the 28th day of July, 1947.

GEORGE VICE,
U. S. Marshal.

By /s/ HERBERT R. COLE,
Deputy.

Marshal's Fee:

Travel	\$.20
Service	2.00
	<hr/>
	\$2.20

[Endorsed]: Filed Aug. 5, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION OF NATIONAL LA-
BOR RELATIONS BOARD FOR EN-
FORCEMENT OF ITS ORDER

In answer to the petition of National Labor Relations Board, hereinafter referred to as the Board, for the enforcement of its order dated October 31, 1946, respondents G. W. Hume Company and California Processors & Growers, Inc., admit, deny and allege as follows:

I.

Respondents admit that they are California corporations, engaged in business in the State of California, within this judicial circuit.

II.

Respondents admit that the Board made its order on October 31, 1946, a portion of which is set forth in its petition.

III.

The order of the Board of October 31, 1946, and the conclusions of law upon which it is based, are not supported by any findings of fact or any fact or facts contained in the record and are contrary to law.

IV.

The petition of the Board herein should be denied by this Court for the reason that to grant it

would be to deny to the employees of respondent G. W. Hume Company the rights guaranteed to them by the National Labor Relations Act and would lead to and create labor disputes obstructing the free flow of commerce.

Wherefore respondents pray that said petition be dismissed.

Dated August 8, 1947.

/s/ PAUL ST. SURE,

/s/ EDWARD H. MOORE,

/s/ JAMES R. AGEE,

Attorneys for Respondents.

Receipt of a true copy of the foregoing Answer is hereby acknowledged this 8th day of August, 1947.

/s/ LEWIS S. PENFIELD,

Regional Attorney, National
Labor Relations Board.

TOBRINER & LAZARUS.

By /s/ ALBERT BRUNDAGE,

8/8/47.

[Endorsed]: Filed Aug. 8, 1947.

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR LEAVE TO INTERVENE

To: The Honorable United States Circuit Court
of Appeals for the Ninth Circuit:

The petition of International Brotherhood of
Teamsters, Chauffeurs, Warehousemen and Helpers

of America, A.F.L., and California State Council of Cannery Unions, A.F.L., respectfully shows that:

I.

A petition for enforcement of an order of the National Labor Relations Board (hereinafter referred to as the Board) against respondent herein has heretofore been filed with the above Court by said Board, and the Clerk has heretofore issued a rule to show cause why said petition should not be granted.

II.

The substance of said petition is that respondent is recognizing these petitioners as the exclusive representatives of the employees of respondent in its Turlock, California, plant for the purposes of collective bargaining; that respondent entered into a contract with these petitioners dated March 25, 1946, and is giving effect to said contract, and that respondent discharged certain employees pursuant to the agreement of March 25, 1946. Said petition prays enforcement of an order directing respondent to cease and desist from so recognizing petitioners herein and from giving effect to said contract dated March 25, 1946, or giving effect to any extension, renewal, modification or supplement thereof or to any superseding contract with these petitioners unless or until said petitioners have been certified by the Board as the representatives of the employees in its Turlock, California, plant. Said petition fur-

ther prays enforcement of an order directing petitioners to reinstate to their former positions and make whole certain named persons.

III.

These petitioners, as parties to said collective bargaining contract hereinabove referred to and as possible parties to future contracts, have a direct and substantial interest in the matters alleged in said petition and sought to be presented to the above-entitled Court. Petitioners herein have a direct and substantial interest in the successful defense of the party named as respondent in the above-entitled proceeding and in the protection of the above-mentioned contract from the attempted destruction by said Board.

IV.

A copy of the Complaint in Intervention which these petitioners ask leave to file is attached hereto and marked Exhibit "A."

Wherefore, your petitioners ask leave to intervene in this proceeding against the Board, petitioner therein, and that they be granted leave to file the proposed Complaint in Intervention, and for such other and further relief as to the Court may seem proper.

Dated this 6th day of August, 1947.

TOBRINER & LAZARUS.

By /s/ MATHEW O. TOBRINER,

Attorneys for Petitioners.

[Endorsed]: Filed Aug. 7, 1947.

[Title of Circuit Court of Appeals and Cause.]

ORDER ALLOWING INTERVENTION

Upon reading the Petition for Leave to Intervene submitted by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., and California State Council of Cannery Unions, A.F.L., and good cause appearing therefor,

It Is Hereby Ordered that said petitioners be allowed to intervene in the above-entitled matter and that they be allowed to file and serve their Complaint in Intervention.

Done and Ordered at San Francisco, California, this 7th day of August, 1947.

For the Court:

/s/ FRANCIS K. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed Aug. 7, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11693

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

G. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.,

Respondent.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, A. F. OF L., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, A. F.
OF L.,

Plaintiffs in Intervention,

vs.

NATIONAL LABOR RELATIONS BOARD,
Defendant in Intervention.

COMPLAINT IN INTERVENTION

Come now plaintiffs in intervention, after leave of this Court first had and obtained, and file this, their Complaint in Intervention, and for cause of action allege:

I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., did, as found by the National Labor

Relations Board (Intermediate Report, p. 3, l. 53) enter into a collective bargaining contract providing for wages, hours and conditions of employment, with respondent in 1941 and did renew said contract on or about March 25, 1946. Said contract of 1941, and said renewal, provided for employment of members of A.F.L. exclusively; said contract and said renewal were so-called union-shop contracts.

II.

From said date of 1941 and to March 25, 1946, and at all times thereafter to and including the present time, A.F.L. is and has been the lawful representative of the employees of respondent for the purposes of collective bargaining. At the time of the execution of said contract in 1941 no other union or labor organization of any kind other than A.F.L. claimed the right to represent any of the employees of respondent in its Turlock, California, plant. On March 25, 1946, when said contract was renewed, A.F.L. represented the majority of the employees at the Turlock, California, plant of respondent and A.F.L. so informed respondent.

III.

Despite the existence of said lawful contracts, and despite the fact that AFL was the lawful representative of said employees as aforesaid, the National Labor Relations Board (hereinafter called the Board) heretofore, in the summer of 1945, accepted petitions for investigation and certification of representatives filed by the Food, Tobacco, Ag-

ricultural and Allied Workers of America, C.I.O., and, from July 3, 1945, to September 11, 1945, proceeded to hold various hearings thereon. Despite the fact that A.F.L. contended that the contracts dated from 1941 as aforesaid constituted a bar to the proceedings, the Board, on October 12, 1945, issued its Decision, Direction of Elections and Order providing that an election be held. Said Board held such contract was not a bar but did, in so doing, recognize said contract was a valid and existing contract which should be respected until its expiration date. Said Board ruling provided:

“* * * any certifications of representatives which may issue as a result of the elections hereinafter directed shall be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.”

Pursuant to said Direction, on October 17, 1945, said Board conducted an election among the employees at the Turlock, California, plant of respondent.

By reason of the fact that said Board failed to give the proper notice of said election, permitted employees other than qualified voters to participate in said election, failed to exact the usual safeguards for the conduct of said election, and conducted said election at the end of the season when many employees were absent, A.F.L. protested said election and, on February 15, 1946, the Board ordered that said election be set aside and ruled that it was void and of no effect.

IV.

After said Order of February 15, 1946, A.F.L., in reliance upon its status as exclusive bargaining representative of the employees of said respondent, on or about March 25, 1946, demanded and secured from the respondent an extension and renewal of said collective bargaining contracts heretofore entered into and existing as aforesaid. At the time of the execution of said extension and renewal of contracts, A.F.L. was, and now is, the lawful and legal representative of said respondent's employees covered by said contract. If A.F.L. had not demanded and secured said contracts, as aforesaid, said employees would have been without representation of any kind and unable to bargain collectively with their employer. Since said Decision and Order of October 12, 1945, and to the present time, a period of almost two years, the Board has failed to determine and certify any other bargaining agency of said employees, and, unless A.F.L. is allowed to continue to enforce its contract with said respondent and to secure further contracts if need be, said employees will be without representation and the process of collective bargaining will be foreclosed.

V.

The contention of the Board that the filing and pendency of a petition for certification halts the process of collective bargaining and forecloses a continuation of the relationship between the employer and the Union necessarily results in a hiatus

in said process. In the instant action, said hiatus has now continued for almost two years and still continues. Nothing contained in the National Labor Relations Act provides that the filing of a petition for certification thus forecloses collective bargaining and affords to a recalcitrant employer the opportunity to evade or destroy the collective bargaining obligation. Notwithstanding the provisions of the National Labor Relations Act, and notwithstanding the practical debacle effected upon the bargaining process by its misinterpretation of the National Labor Relations Act, the Board would prevent A.F.L. from continuing the existing relationship and would divest the A.F.L. of its contractual rights. The Board would thereby work a retroactive destruction of collective bargaining for the past two years and a prospective foreclosure thereof for an indefinite term in the future.

As and for a Second, Further, Separate and Independent Cause of Action in Intervention, plaintiffs in intervention allege:

I.

Plaintiffs in intervention, hereinafter referred to as A.F.L., hereby refer to all of the allegations of paragraphs I, II, III and IV of the First Cause of Action and by said reference hereby incorporate said allegations herein as though set forth in full.

II.

In the event that a filing of a petition for certification prevents the continuation of collective bar-

gaining and the bargaining relationship between the existing bargaining agency and the employer, collective bargaining will be subjected to a constant series of interruptions as well as to the incitement of strikes and stoppages of work contrary to the provisions and intent of the National Labor Relations Act. In the event that such construction of the Act were correct, an employer would be freed completely of the obligation of collective bargaining by the filing of a petition by a rival union. Such an interpretation would encourage and incite inter-union rivalry and the filing of petitions and counter-petitions by competing unions. In the instant case, such a ruling has so incited an attempt by Food, Tobacco, Agricultural and Allied Workers of America, C.I.O., to destroy the collective bargaining contracts and relationships of A.F.L. in the canning industry.

III.

The ruling of the Board that the existing relationship is destroyed by the filing of a petition for certification subjects the canning industry of California, in particular, to dissension and discord in perpetuity. During the past six years A.F.L. and respondent have entered into collective bargaining negotiations and consummated collective bargaining agreements prior to March of each year. Due to the pressure of high production during the season, it is impossible at that time to work out a collective bargaining contract, and it has therefore been the practice and custom of the industry to consummate such

contract prior to the height of the canning season. In the event that a petition for certification could arrest such process until an election were held and the Board certified a collective bargaining agency, the industry would be subjected to endless dissension. A rival union could file a petition at any time during the year; an election could only be held during the summer months when the canneries were all operating; certification could be delayed by objections and investigations by the Board and, as a consequence, no bargaining agency would be permitted to function during the actual canning season. The filing of such petitions could be repeated year after year and collective bargaining in the industry virtually eliminated. Such prohibition of collective bargaining in the canning industry over the years, with the consequence of disordered industrial relations and labor unrest, would seriously jeopardize one of California's principal industries. Notwithstanding the frustration of collective bargaining hereinabove described, and notwithstanding the violation of the purpose and provisions of the National Labor Relations Act thereby effected, the Board has attempted herein to enforce an order bringing about these very results.

As and for a Third, Further, Separate and Independent Cause of Action in Intervention, Plaintiffs in Intervention allege:

I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., hereby incorporate all of the alle-

gations of paragraphs I, II, III and IV, of the First Cause of Action, by reference herein as though said allegations were herein set forth in full.

II.

The National Labor Relations Board, hereinafter referred to as the Board, has heretofore ruled that an employer and labor organization act at their peril in consummating an agreement with knowledge of the pendency of certification proceedings before the Board. Thereby said Board has ruled that an employer and labor organization which conclude a contract during the period in which a petition for certification by a rival organization is being considered by the Board do so at their peril and, in the event the rival organization makes an ultimate showing of majority representation, said contract is subject to defeasance.

III.

Following the first election on October 17, 1945, in the above-entitled matter, which said election was set aside on February 15, 1946, as hereinabove set forth in Paragraph III of the First Cause of Action, said Board held a second and further election among the members of the California Processors & Growers, Inc., including the plant of respondent at Turlock, California, on August 30, 1946. In said election A.F.L. received 16,262 votes, and F.T.A.-C.I.O. 14,896. Said election thereby established that A.F.L. represented a majority of the employees of the Cali-

ifornia Processors & Growers, Inc. Pursuant to the rule heretofore set down by the Board that the parties enter into an interim collective bargaining agreement at their peril, which agreement is subject to defeasance if the organization does not represent a majority of the employees, but subject to confirmation in the event that the labor organization does represent such a majority, the agreement herein involved was affirmed by said second election and, according to the rule of the Board, is valid. Notwithstanding the subsequent validation of said agreement by said election, said Board does now unlawfully attempt to invalidate said agreement.

As and for a Fourth, Further, Separate and Independent Cause of Action in Intervention, Plaintiffs in Intervention allege:

I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., hereby refer to all of the allegations of paragraphs I, II, III and IV of the First Cause of Action, and by said reference hereby incorporate said allegations herein as though set forth in full.

II.

The Order which the Board seeks to enforce herein provides that respondent cease and desist from recognizing A.F.L. or giving effect to its contract unless and until said organization shall have been certified by the Board as the representative of the employees in its Turlock, California, plant.

III.

Following the first election on October 17, 1945, in the above-entitled matter, which said election was set aside on February 15, 1946, as hereinabove set forth in paragraph III of the First Cause of Action, said Board held a second and further election among the members of the California Processors & Growers, Inc., including the plant of respondent on August 29 and 30, 1946. The matter of the certification of the Union receiving the majority of the votes cast in said election is still pending before the National Labor Relations Board. The Board should render such certification within a reasonably short time. Such certification should certainly be forthcoming prior to the next canning season. The pendency of said proceedings renders the determination of the status of the involved contract academic and moot. The involved contract would in any event operate only to the date of certification. Subsequent to certification, the involved contract would be void and of no effect in the event that a union other than A.F.L. were to be certified. The proceedings of the Board herein to determine the status of the involved contract prior to the certification now pending before it is an unnecessary expenditure of the time of this Honorable Court. Notwithstanding this fact, the Board has invoked the process of this Honorable Court to render a decision which, as hereinabove set forth, cannot affect any live and existing legal issue by and between the parties and would therefore be moot and academic.

Wherefore, A.F.L. prays that the petition for enforcement of an Order of the National Labor Relations Board in the above-entitled cause be dismissed.

Dated this 6th day of August, 1947.

TOBRINER & LAZARUS.

By /s/ MATHEW O. TOBRINER,

1035 Russ Building, San Francisco 4, Calif., Attorneys for Intervenors.

State of California,
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 6th day of August, 1947.

[Seal] /s/ ALFRED D. MARTIN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 7, 1947.

Before the National Labor Relations
Board, Twentieth Region

Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA
PROCESSORS & GROWERS, INC.,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED
WORKERS UNION OF AMERICA, C.I.O.,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, A. F. OF L., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, A. F.
OF L.,

Parties to the Contract.

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 a.m.

Before: Howard Myers, Esq.,

Trial Examiner.

Appearances:

John Paul Jennings, Esq., San Francisco, Cali-
fornia, appearing on behalf of the National Labor
Relations Board.

. Gladstein, Andersen, Resner, Sawyer & Edises, by
Bertram Edises, Esq., appearing on behalf of Food,
Tobacco, Agricultural & Allied Workers Union of
America, CIO.

Paul St. Sure, Esq., Financial Center Building, Oakland, California, appearing on behalf of California Processors & Growers, Inc., and G. W. Hume Company.

James R. Agee, Esq., Financial Center Building, Oakland, California, appearing on behalf of California Processors & Growers, Inc., and G. W. Hume Company.

Tobriner & Lazarus, by Mathew O. Tobriner, Esq., 1035 Russ Building, San Francisco, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the contract. [2*]

PROCEEDINGS

Trial Examiner Myers: Are you ready to proceed, gentlemen?

I would like to announce that this is a formal hearing before the National Labor Relations Board in the matter of G. W. Hume Company and California Processors & Growers, Inc., and Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, Parties to the Contract, being Case No. 20-C-1391.

The Trial Examiner appearing for the National Labor Relations Board is Howard Myers.

* Page numbering appearing at top of page of original Reporter's Transcript.

Will counsel or representatives of the parties please state their appearances for the record?

Mr. Jennings: John Paul Jennings for the National Labor Relations Board.

Mr. Edises: Bertram Edises, of the firm of Gladstein, Andersen, Resner, Sawyer & Edises, for FTA-CIO.

Mr. St. Sure: Paul St. Sure and James R. Agee for the California Processors and Growers and the G. W. Hume Company.

Mr. Tobriner: Tobriner & Lazarus by Mathew O. Tobriner, for the AFL.

Trial Examiner Myers: Does anybody else want their appearances noted on the record? [4]

(No response.)

Trial Examiner Myers: I would like to announce further that the official reporter makes the only official transcript of the proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed

corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go "off the record" for the purpose of hearing extended argument. "Off the record" discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits offered in evidence shall be in duplicate.

At the close of the hearing, the Trial Examiner will expect counsel to argue orally, during which argument the Trial Examiner will feel free to dis-

cuss with and ask questions of the counsel with respect to their contentions as to the issues of facts and the legal principles involved.

The oral argument will be part of the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, within five days of the close of the hearing. [6] Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

During the course of the hearing, the Trial Examiner will undoubtedly ask questions of the various witnesses. The Trial Examiner wants counsel to feel free to object to any of his questions, if they think the questions are improper, in the same manner, and with the same freedom, as if the questions were propounded by counsel.

The parties might think that five days to file a brief after the close of the hearing is not sufficient time, because they might not get the record within the five days. I would like to announce that if any of the parties are considering filing briefs with me, they should discuss the matter of expediting the delivery of the record with the official reporter.

You may proceed, Mr. Jennings.

Mr. Jennings: Mr. Examiner, at this time I should like to offer in evidence the original documents in this proceeding, and ask that they be given the following designations:

The original of the Fourth Amended Charge, Board's Exhibit 1 (a); the original Complaint,

Board's Exhibit 1 (b); the original of the Notice of Hearing, Board's Exhibit 1 (c) and the Affidavit of Service of Notice of Hearing and Complaint, Board's Exhibit 1 (d).

As Board's Exhibit 1 (e), the original of the Answer of the G. W. Hume Company and California Processors & Growers, Inc.

As Board's Exhibit 1 (f), the original of the Answer filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL.

As Board's Exhibit 1 (g), the original of the Motion to Dismiss filed by the organizations last referred to.

Trial Examiner Myers: Do you offer those papers in evidence?

Mr. Jennings: Yes, I am offering them at this time.

Trial Examiner Myers: Is there any objection, gentlemen?

Mr. St. Sure: We have no objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the papers will be received in evidence. I will ask the Reporter to please mark them 1 (a) through 1 (g) respectively.

(The documents referred to were marked Board's Exhibits Nos. 1 (a) through 1 (g) and were received in evidence.)

Mr. Jennings: Mr. Examiner, I might call your attention to two things in connection with the documents filed by Mr. Tobriner on behalf of the Teamsters Union. There is no motion to intervene as yet filed by that organization, and I have [8] something to say when that motion to intervene is made.

Trial Examiner Myers: You mean the motion by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers to intervene?

Mr. Jennings: That is correct, Mr. Examiner.

Mr. Tobriner: They are parties to the dispute, as I understand it. They are certainly named in the caption, Mr. Jennings.

Mr. Jennings: I may as well say at this time, as I have told Mr. Tobriner, that they are in the case for a limited purpose. I would object to their participating fully in the case, other than as their interests may appear.

Mr. Tobriner: May I be heard on that matter?

Trial Examiner Myers: We will cross that bridge when we get to it, Mr. Tobriner.

Mr. Tobriner: That is a rather novel position for counsel for the Board to take. I want the record to show that this is the first instance we have had of that novelty. Although we have had novel occasions in which the Board counsel has taken unusual positions, this is the most unusual.

Mr. Jennings: We have discussed this matter previously, Mr. Examiner. I think we understand each other's position.

Trial Examiner Myers: You mean you have discussed it with counsel before?

Mr. Jennings: Yes. [9]

Mr. Tobriner: Just a minute. Let the record show I never heard any such statement by counsel, that we were in the case only for a limited purpose and that we had to file a motion to intervene.

Mr. Jennings: In any event, my position was and still is that I think the Teamsters are here for a limited purpose only.

Trial Examiner Myers: That is your position?

Mr. Jennings: Yes, and I am prepared to argue it when the occasion arises.

Trial Examiner Myers: If any occasion arises when you think they are going beyond what you think is a limited purpose, I will hear counsel at that time.

Mr. Jennings: Thank you.

There is also a motion to dismiss which has been filed by the Teamsters Union, and that is in the files now.

Trial Examiner Myers: Before I hear the motion to dismiss, are there any motions addressed to the pleadings outside the motion to dismiss which was filed by the International Brotherhood of Teamsters and the California State Council?

(No response.)

Trial Examiner Myers: Do you want to be heard now on your motion, Mr. Tobriner?

Mr. Tobriner: Yes, I would like to be, Mr. Examiner, if I may. [10]

Trial Examiner Myers: Wait until I read the motion.

Mr. Tobriner: Yes.

Trial Examiner Myers: Now you may proceed, Mr. Tobriner.

Mr. Tobriner: The motion to dismiss filed by the parties to the contract, as stated in the caption, which we will call for brevity the "AFL", rests upon three separate and independent grounds, each of which, we think, is sufficient to sustain a motion. They are alternative grounds.

The first ground relies upon the fact that the complaint on file, in Paragraph IX, Page 7, alleges as follows:

"At the time said contract was executed, the Respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the Respondents knew further that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the Respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

Assuming for the purposes of argument, and assuming, as the complaint states, that the Board provided or ruled that a contract could not be entered into between the AFL and the employers—an assumption which I do not think is founded on fact, but still making that assumption—if that [11] were a fact, the proper tribunal and the proper agency for the relief requested by the Board here would be

the U. S. Circuit Court of Appeals for the Ninth Circuit. If an order has been made by the Board, and that order has been violated, according to the Board's position, then the matter is one of enforcement only, and there is no purpose and no function to be performed by a hearing before a Trial Examiner. The proper tribunal would be the Circuit Court of Appeals.

So much for the first ground. That assumes that an order was made by the National Labor Relations Board.

Returning to the second ground: We do not think any such order was made. The National Labor Relations Board in its opinion on February 15, 1946, carried certain language. The only order made at that time—and inspection of the Supplemental Decision would show that, and I shall read it to you—was to void and nullify the election.

I hold in my hand the Supplemental Decision and Order which is part of the Board's records, being entitled "Bercut-Richards Packing Company and Cannery and Food Process Workers Council of the Pacific Coast and its affiliated Unions: Food, Tobacco, Agricultural and Allied Workers Union of America, CIO", Case No. 20-R-1414, et al.

I read the Order in that case:

"It Is Hereby Ordered that the elections held from October 11 to December 20, 1945, inclusive, among the [12] employees of members of C. P. & G. and among the employees of the Independent Companies be, and they hereby are, vacated and set aside".

That is the sole Order. That is the sole Decree. There is nothing in this decision beyond that Order, so far as an Order is concerned. There is language in the Decision. That language is dicta; the language is advisory. It attempts to set forth what the rights and obligations and duties of the parties are, apart from the setting aside of the election.

If it is to be claimed that some of the language in here is to be construed as an order, then we move to dismiss, upon the ground that we never were heard upon the subject matter of the alleged order. That subject matter pertains to the right to enter into a collective bargaining contract subsequent to March 1, 1946. No hearing was ever called upon that subject matter, no notices to the parties was ever given that the subject matter would be considered, no charges, no complaints were ever filed with respect to it. We never were heard upon that subject matter.

So, if an order has been made ordering that no contract could be entered into after March 1, 1946, we have not been heard. Due process has not been afforded to us, and if the Board, *ex parte* and *ex cathedra*, without following due process, has made any such order or ruling, then we are here to say that this proceeding should not go ahead, because we have not been heard.

We say if the Board is to take the position that it has made an order on this matter *ex parte*, that the Board has attempted to prejudge this case without hearing the parties.

Trial Examiner Myers: Where do you get the statement that the Board has entered an order?

Mr. Tobriner: It says as I read it in the first instance, in the complaint, Paragraph IX, Page 7, reading as follows:—

In fact, I would submit, Mr. Trial Examiner, that this proceeding is based upon that contention.

Trial Examiner Myers: Yes. Go ahead.

Mr. Jennings: It states: “provided”, Mr. Examiner. It does not say “ordered” or “directed”.

Mr. Tobriner: Let us read it.

“At the time said contract was—”

Trial Examiner Myers: What you meant in the complaint, as I get it, was that it be “should not grant exclusive” instead of “could not”.

Mr. Tobriner: It goes beyond that, Mr. Trial Examiner, I think.

Mr. Jennings: I intend to offer the Board’s Order in evidence, Mr. Examiner.

Mr. Tobriner: At the top of Page 7, Mr. Examiner, it says, “At the time said contract was executed—” [14]

Mr. Jennings: The Board’s direction of elections and the Supplemental Decision probably are matters of which the Board could take judicial notice, but we intend to offer both of those documents.

Mr. Tobriner: We will insist upon it.

Trial Examiner Myers: Go ahead, Mr. Tobriner.

Mr. Tobriner: On page 7 of the Complaint it says:

“At the time said contract was executed, the Respondents knew that the question of repre-

sensation of their employees was still pending and unresolved before the Board, and the Respondents knew further that the Board in its Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the Respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

Certainly the purport and the intention of that language, by the use of the word "provided" is "decided," "ruled" or "ordered." Otherwise it makes no sense. In other words, we are accused, because we have entered into a contract with the employer, of violating the Supplemental Decision of February 15th, and on that basis this case is proceeding. If that is the case, we have not been heard.

As a third and final ground for our motion to dismiss, we think that the interpretation of the Supplemental Decision upon which the Board hinges its case here is incorrect. The Regional Office has construed that section of the opinion as a proviso or an order, and we think that that does not accord with the law. We submit the Board lacked jurisdiction to make any such ruling. They recognize that the collective bargaining agency for this industry and for the employees employed in it, for nine years has been the AFL. All of the cases hold that the AFL continues to act as a bargaining agency in that industry unless and until a

new collective bargaining agency has been certified to take its place. No such certification has ever taken place. No other bargaining agency has ever legally been substituted for the AFL. Until such time, we submit we have the full right, obligation and power to enter into a contract with the employers, and the employers correspondingly have the obligation and duty to contract with us.

So, on that third ground we likewise submit our motion to dismiss.

Trial Examiner Myers: Does anybody else want to be heard, either on behalf of or against the motion?

Mr. Jennings: So that you may intelligently consider it, Mr. Examiner, I should like at this time to offer in evidence the documents which I referred to. [16]

As Board's Exhibit 2, the Decision and Direction of Election of October 12, 1945.

Trial Examiner Myers: We will have it marked first. Board's Exhibit 2.

(Thereupon, the document above referred to was marked Board's Exhibit No. 2 for identification.)

Mr. Jennings: As Board's Exhibit 3, the Supplemental Decision and Order of February 15, 1946. I have additional copies, if anyone desires them.

(Thereupon, the document above referred to was marked Board's Exhibit No. 3 for identification.)

Trial Examiner Myers: Does anybody want to be heard in favor of the motion?

Mr. Jennings: I should like to say this, Mr. Examiner, and state briefly the Board's position.

Trial Examiner Myers: You are going to oppose the motion?

Mr. Jennings: Yes.

Trial Examiner Myers: Does anybody else want to be heard in favor of it?

Mr. St. Sure: I would like to be heard, not in favor of the Union's motion particularly, but the Answer that has been filed on behalf of the employers in this case asks for a dismissal of the Complaint which is on file herein.

The position of the employers in some degree parallels that of the Union in its motion to dismiss, in that it is our view that the Board's proceeding in this particular situation is apparently based upon the theory that the National Labor Relations Board, in its order setting aside the election, likewise established rules for operation of the canneries and the bargaining unit and the collective bargaining representatives of the employees. Indeed, as Mr. Tobriner has pointed out, the complaint on file goes so far as to charge that the parties, including the respondent Companies, knew that the Board had expressly provided that the relationship that we had had over a period of many years should in effect be discontinued. That is a rough paraphrase of the language.

Certainly the specific language which Mr. Tobriner has quoted does point up the theory not only of the Regional Board on the filing of this com-

plaint with the National Board, but the National Board's own declarations through the press and otherwise, that they have in some fashion made an order which is binding upon the parties with relation to the bargaining rights, pending an election.

Not only do we believe that that position is unsound and erroneous and contrary to law, but we believe, in addition to that, the statement of Mr. Herzog, the Board Chairman, officially speaking for the Labor Board, expressly refutes that theory.

Trial Examiner Myers: Where is that?

Mr. St. Sure: On the 25th of February.

Trial Examiner Myers: I mean, is it stated in the Supplemental Decision of the Board?

Mr. St. Sure: No. It is stated in a letter which Mr. Herzog, as Chairman of the Board, wrote to Congressman Anderson in response to a letter of Mr. Anderson. I would like to refer briefly to that exchange of letters.

On the 25th of February, Congressman Anderson addressed a letter to Mr. Herzog, which I shall read in part:

“The Board's decision of February 18th, setting aside last October's election which was held to establish an exclusive bargaining agent for the cannery workers in California, reads in part as follows:

“ ‘The employers may not, pending this (a new election) give preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members.’ ”

Congressman Anderson requested that the Board consider the effect of that language and modify it. On the 27th of February, Mr. Herzog replied to Congressman Anderson upon the letterhead of the National Labor Relations Board, and signed the letter "Paul M. Herzog, Chairman."

I will have a photostat available of the original, if there is any question about its authenticity.

In that letter to Congressman Anderson, Mr. Herzog had the following to say:

"I hasten to reply to your letter of February 25 with reference to the difficult situation faced by the California cannery industry. My colleagues and I realize that, unless those unions were willing to exercise self-restraint, some of these problems might arise as a result of our recent decision setting aside the October elections. I am sure, however, that you would not have wanted the Board to reach any decision other than that which a majority of us thought was required as a matter of good conscience under the law.

"The language in the opinion to which you allude was simply a declaration of the law as we see it and as the Courts have interpreted it. It is true that the Board could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had power to do so in an unfair labor practice proceeding. We nevertheless considered it our duty to call the parties' attention to their rights

and obligations under the law, so that they might govern their conduct accordingly between now and the time a new election can be conducted. It would certainly have been less fair to say nothing on the subject, and then to take action against the employers later, if they engage in the conduct which we believe would be unlawful. It certainly will not be the Board's fault if either or both labor organizations see fit to try to force the employers into a situation which may require them, in order to save their crops, to disregard their obligations under the National Labor Relations Act.

"You may, therefore, wish, perhaps with other members of the California Delegation, to call upon either or both of the competing labor organizations"—and so on.

The balance of the letter has to do with the request the Congressman made for some action.

As I read that letter, and as the canners, the employers read that letter, Mr. Herzog, as Chairman of the Board, has spelled out what we believe the fact to be, that the Board, in this so-called "Supplemental Decision and Order" setting aside the election, did no more than express its opinion, what it thought the law might be in the event the proper proceedings were had and the Courts followed the judgment of the Board.

Without commenting on the rather amazing statement of Chairman Herzog that it would not be the Board's fault if the labor unions pressure

the employer into doing this or that thing, we certainly have the view and feel that we are obligated under the law to act upon the situation and the conditions as we find them, and not upon the Board's expressed advice in a given situation, before such time as the Board's theory of the law and its interpretation can be tried out and a proper hearing had. [21]

Again the letter goes on to say, in connection with another matter, the matter of the right of the employers to deal at a particular time:

"We do not see how we can modify the recent decision as you suggest, so as to expressly authorize the C. P. & G. to renew the old contract with the AFL in its present form. It should be remembered that a closed shop agreement is only valid under Section 8(3) of the Act if it is made with a labor organization which represents a majority of the employees when made . . ."

The "when made" is underlined, and was underlined by Mr. Herzog. That is a quotation from the Act itself, but the underlining is Mr. Herzog's underlining.

". . . One could hardly say that the A. F. of L. Union surely does represent such a majority as of March 1946, in view of the continued pendency of the Board's election case and, indeed, of the results of the very election that was set aside."

It seems to us again that Mr. Herzog there is interpreting the Act as he sees it, underlining the expression "when made," and certainly the employer has not only the right but the obligation, in following the terms of the Act itself, to take into account the language which Mr. Herzog refers to, and, as the Board itself suggests, it might be difficult to say as of the date that elections were held in the canneries and elections subsequently set aside, that the AFL had a majority at that time. Certainly it ill behooved the Board to say that as of any other time the employer is not either expected to or required to determine under the Act, and to act in accordance with his determination that a majority may exist as to one labor organization or another.

In other words, we feel that until and unless there has been a hearing and a determination by way of a change in collective bargaining representatives, that we are not only not violating the law in continuing our relationship with the AFL, but indeed, that we would be violating the law if we failed to continue that condition and that situation.

Under all of the circumstances—this is rather an informal method of presenting a motion to dismiss—but, we do feel that the Board has been, shall we say, "playing labor politics" at the expense of the employers, of the agriculturists of this State, in this proceeding, and that we are now faced with further pressure and union politics in connection with the Board's action.

We have endeavored, as this record will disclose, in the event that this complaint is heard, to do one thing, to operate canneries in the State of California.

So far as the Board's action is concerned, it has apparently endeavored to maintain a theoretical right-of-way without regard, we contend, either to the rights of the workers who are involved here or the employers who are under the obligation to their workers and to the growers of this State to do a job of processing food.

I do not propose to make any further speeches along this line, but I do want the Trial Examiner to have in mind the position sincerely taken by the employers in this case, and I do not intend to endeavor to try our position on the basis of speech making. But, because this matter has such a far reaching effect upon not only the labor relationships in the canning industry, but upon the food supply of this country, our view is that the entire background ought to be on the table as a part of the record, and before the Trial Examiner at this stage of the proceeding.

We do urge that the complaint be dismissed upon the ground that there is no basis for the charge which the Board has received and which it makes against the employers in this situation. Indeed, on the contrary, the action of the employers which the Board is attempting to prove is illegal, as a matter of fact is the only legal thing which the employers could do under the National Labor Relations Act.

Mr. Jennings: I have only this to say, Mr. Ex-

aminer. We are actually arguing the merits of the case on the motion to dismiss. In fact, I think that is what we were doing. I would prefer to argue the merits when the evidence is in.

Mr. St. Sure: May I ask this question, Mr. Trial Examiner? [24]

If Mr. Jennings takes the position that we are arguing the merits on this motion to dismiss, I assume that he then concedes that the Board's theory is that there is a violation of an order which told us that we could not bargain.

Mr. Jennings: I am ready to state my position now.

Mr. St. Sure: Pardon?

Mr. Jennings: I think the position of the Board is accurately stated in the letter of the Chairman of the Board which Mr. St. Sure read. It was not an order. Obviously the decision of the Board in the representation case is not an order within the meaning of the Act, because an order is entered only in an unfair labor practice proceeding, such as the present. The theory of the complaint is that what the employers did was a violation of the Act. That is what is before your Honor for decision.

Trial Examiner Myers: Does anybody else want to be heard?

Mr. Edises: Yes, I would like to say a word, Mr. Examiner.

The motions made by the Teamsters and by the California Processors and Growers carefully single out a portion of Paragraph IX of the complaint, and carefully overlook the real heart and substance

of that section. Paragraph IX states that on or about a certain date, while a question of representation was still pending and unresolved before the Board, the respondents executed an agreement with the AFL, recognizing the AFL as the exclusive representative of its employees at the Turlock plant, and requiring, as a condition of employment, membership in the AFL, and that since that date the respondent has enforced and given effect to the contract.

It further states, "At the time said contract was executed, the Respondents knew that the question of representation of their employees was still pending and unresolved before the Board . . ."

That is, in my opinion, the basis of the cause of action here, the fact that there was a pending question of representation before the Board, that an election had been held which showed that most of the workers in the California canneries wanted the F.T.A.-C.I.O. as their collective bargaining representative, that in spite of that evidence, with knowledge of it, the employers went ahead and made the exclusive bargaining and closed shop contract which is the subject of complaint here.

Section 9 further goes on and states that in addition the Board expressly provided in its decision that the making of such a contract would be illegal. That language can be regarded as sheer surplusage for purposes of this case. All that it does is point up the factor of knowledge on the part of the employers, which would indeed be presumed from the fact of their participation in the representation

case, and from the fact of their having been duly furnished with the Board's various decisions in that case.

The point is further made by the Teamsters' representative that this action was entirely legal for the reason that the AFL, as he puts it, had been the bargaining representative for nine years. This is an interesting statement, which can hardly be explored effectively in this state of the record and in the absence of proof.

I want to assure the Examiner that the proof will show what common experience bears out, that the "AFL," so-called, is not one single entity or even one harmonious coalition of operating unions. The fact of the matter is that the AFL is a series of different unions, many of whom, I believe, have been known to engage in jurisdictional disputes.

The record will show in this case that the Teamsters Union were strangers to this whole situation until the middle of the year 1945, and that the previous collective bargaining representative had not been the Teamsters at all, but had been a "Federal Local," so-called, of the American Federation of Labor.

So, even if there were such a thing as a presumption of continuing representation or majority, it could not possibly have any application in the present case. [27]

Thank you.

Mr. Tobriner: Mr. Trial Examiner, if I may have a brief moment to answer and to comment upon some of the interesting observations made.

Mr. Edises has stated now that the language in the complaint on page 7 is to the effect that the Board in its Supplemental Decision of February 14, 1946, "had expressly provided," et cetera, is surplusage. Indeed, the attorney for the Board has said on the record that no order was issued in the Supplemental Decision despite the language employed in the complaint.

So far as I know the law—and I think that there are myriads of cases to prove it—when surplusage is complained of in the complaint, it should go out. I do not think there is much question about that, Mr. Trial Examiner. We do not want to proceed in this case on language that we think means something and which counsel says does not mean, according to our lights, what we think it means. He says "provided" does not mean "ruled." I think the dictionary will not bear out his contention, and certainly the language will not bear out his contention. But, in any event F.T.A. counsel has said it is surplusage, and the Board has not said it was not surplusage. So, I think we are entitled to move to strike.

I will challenge counsel to find any case in the books of California or any other of the 47 states in which it is not always recognized that surplusage in a complaint is subject to a motion to strike. Otherwise we will proceed here on two different dual theories, because we will have to try to protect ourselves against the complaint as we read it and as the Judge would look at it.

Trial Examiner Myers: Mr. Edises said that those words were surplusage in the Supplemental Decision of the Board. He did not say they were surplusage in the complaint.

Mr. Jennings: I can say, as far as the Board is concerned, we consider that the language quoted in the complaint is not surplusage. I would say this: I think, without the existence of the facts alleged in that portion of the complaint, a violation would exist merely by reason of the fact that a contract was signed during the pendency of the representation case.

Trial Examiner Myers: You mean that it is your contention that even if the Board did not make those statements in its decision, the entering into of the contract——

Mr. Jennings: Would still be a violation. That is correct, Mr. Examiner.

Mr. Tobriner: I understood Mr. Edises to say that this language was surplusage. In fact he read this language, Mr. Trial Examiner.

Mr. Edises: May I repeat what I said?

Trial Examiner Myers: Just repeat what you said. [29]

Mr. Edises: I simply want to straighten out Mr. Tobriner, who apparently has the faculty of selective deduction.

Trial Examiner Myers: Now, wait a minute.

Mr. Tobriner: If Mr. Edises is going to correct that statement, may I ask that he not throw any bombs over this way. Let us get the record straight.

Mr. Edises: I left my bombs in the anteroom, Mr. Examiner.

Trial Examiner Myers: Go ahead.

Mr. Edises: What I said was that this particular language was not necessary to a statement of a cause of action, that the provisions which were overlooked and ignored in effect by counsel for the moving parties in and of themselves stated a cause of action.

Mr. Tobriner: Mr. Trial Examiner, simply to clear that up, in our Code it says that surplusage consists of unnecessary allegations.

So, I think my statement on the record was correct. However, Board counsel does not agreed with F.T.A. counsel, evidently. Board counsel merely wants to change the meaning of the word "provided". I think that should be amended on its face, then, so we would know what we are talking about.

Trial Examiner Myers: Have you a motion to amend?

Mr. Jennings: No, Mr. Examiner. I am satisfied.

May I ask whether Board's Exhibits 2 and 3 have been received in evidence?

Trial Examiner Myers: Is there any objection to these papers going into evidence?

Mr. Tobriner: No objection.

Mr. Jennings: May it be stipulated by all counsel that their clients received copies of those documents?

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Mr. St. Sure: Yes.

Trial Examiner Myers: Do you so stipulated, Mr. Tobriner?

Mr. Tobriner: Yes.

Trial Examiner Myers: And you, Mr. Edises?

Mr. Edises: So stipulated.

Mr. Jennings: That is from the Board in Washington, and on or about the date the decisions were issued, is that correct?

Mr. St. Sure: That is correct.

Mr. Edises: That is correct.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Is there any objection to these papers going into evidence, that is, Board's Exhibits and 3 for identification? [31]

(No response.)

Trial Examiner Myers: Hearing no objection, the papers are received in evidence, and I will ask the Reporter to please mark them Board's Exhibits 2 and 3 respectively.

(The documents heretofore marked Board's Exhibits Nos. 2 and 3 respectively for identification were received in evidence.)

Trial Examiner Myers: Does anybody else want to be heard on the motion to dismiss?

(No response.)

Trial Examiner Myers: Hearing none, I will deny the motion at this time, with leave to renew. I do not have any of the facts before me, so that I can pass upon the motion. That is why I feel constrained to deny it at this time.

Are there any other motions, gentlemen?

Mr. St. Sure: Before we proceed, Mr. Trial Examiner, I am naturally curious about the Board's position as expressed by Mr. Jennings, that the Teamsters are in this proceeding for a limited purpose only. We find them quite generally in this proceeding from our point of view, without any limitations at all. We would like to know what the limitations are that Mr. Jennings has in mind, so that we will know how to proceed.

Trial Examiner Myers: Have you received a copy of the motion to dismiss of the Teamsters and the California State Council? [32]

Mr. St. Sure: Yes, I received that.

Trial Examiner Myers: They appear here especially.

Mr. St. Sure: That may well be, but they likewise remain as parties to the contract.

Mr. Tobriner: They likewise appeared especially for the purposes of the motion, and they likewise have filed an answer. Hence the motion is denied for the purposes of this hearing, we are now in here generally, and we are very anxious to know what Mr. Jennings' mysterious notions may be.

Trial Examiner Myers: I imagine that he means that if he wants to bring in some matters showing, as he says, his independence of 8(1), that will not affect you. That only goes to the employer.

Is that what you mean?

Mr. Jennings: That is one of the things, Mr. Examiner. I think whatever violations of the Act were committed by the Respondent had no relation to the contract or are no concern of the Teamsters.

Trial Examiner Myers: You mean, by the employers?

Mr. Jennings: By the employers, that is right, and that Mr. Tobriner's legitimate interest is limited to the defense of his contract, and no more.

Trial Examiner Myers: We will take that up when the time comes.

Is that all right with you gentlemen? [33]

Mr. St. Sure: That is all right with me.

Mr. Tobriner: It absolutely makes no sense to me, Mr. Trial Examiner, that Mr. Jennings should be in here telling us that we are not interested in the situation in some form. Unfortunately or fortunately, we are most interested in the situation. Although this is the third such proceeding that I have now gone through with respect to the same essential interests, the associate counsel with Mr. Jennings from the Regional Office have not yet seen fit to tell us that we were not most interested in every way. They have never made this statement before. That is why I say it is mysterious.

Mr. Jennings: This is the first 8(3) case we ever had, Mr. Examiner, independent of 8(1).

Mr. Tobriner: That, Mr. Jennings, as the evidence undoubtedly will disclose, involves an interpretation of the existing contract, which the Board recognized to be valid. Certainly we are interested in that.

Mr. Jennings: I will be prepared to argue the point if it arises, Mr. Examiner.

Trial Examiner Myers: All right. We will wait until you make some objections, and then I will hear counsel on that.

Mr. Jennings: I should like to call the Examiner's attention to Paragraph 1 of the complaint, which sets out certain commerce facts as admitted. [34]

Trial Examiner Myers: Admitted by whom?

Mr. Jennings: Admitted by both the Company and C.P.&G. and by the Teamsters; by all parties.

Trial Examiner Myers: Very well.

Mr. Jennings: I should like to ask a stipulation by all parties at this time that those allegations are correct, and ask the admission of the Respondents that they concede that they are engaged in commerce within the meaning of the National Labor Relations Act.

Trial Examiner Myers: You mean the Respondent employers?

Mr. Jennings: Yes, sir.

Trial Examiner Myers: Whether they are engaged in commerce?

Mr. Jennings: That is right.

Trial Examiner Myers: Do you so stipulate?

Mr. St. Sure: Yes.

Trial Examiner Myers: It is stipulated by the parties that the Unions are labor Unions within the meaning of the Act.

Mr. Tobriner: I hate to do so, but I think I will be constrained to recognize that the FTA is a labor organization.

Mr. Jennings: I was going to request that stipulation. I think all counsel indicated willingness to stipulate for the purpose of this proceeding that

the organizations named in Paragraph 3 are labor organizations within the meaning of the Act.

Trial Examiner Myers: Do you so stipulate, Mr. Tobriner?

Mr. Tobriner: I so stipulate.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: I so stipulate.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: So stipulated.

Trial Examiner Myers: You, Mr. St. Sure ?

Mr. St. Sure: Yes.

Trial Examiner Myers: Thank you, gentlemen. Is there anything else?

Mr. Jennings: May it be stipulated further that the Respondent cannery is and at all times relevant in this proceeding was a member of the California Processors and Growers, Inc.?

Mr. St. Sure: Yes.

Mr. Jennings: Likewise I would like to ask a stipulation, as the Board has previously found, that the California Processors and Growers is an employer within the meaning of the National Labor Relations Act.

Trial Examiner Myers: Do you so stipulate, Mr. St. Sure?

Mr. St. Sure: I do.

Trial Examiner Myers: You, Mr. Tobriner?

Mr. Tobriner: Yes.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: So stipulated. We so allege in our complaint.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes.

Trial Examiner Myers: Are there any other stipulations or concessions that you want at this time, Mr. Jennings?

Mr. Jennings: I wish to add one allegation to the complaint, which was left out in typing and which has already been stipulated to, as follows—

Trial Examiner Myers: You mean you want to move to amend the complaint?

Mr. Jennings: Yes, Mr. Examiner.

Trial Examiner Myers: Very well. Make your motion.

Mr. Jennings: To add this paragraph—

Trial Examiner Myers: What should it be designated as?

Mr. Jennings: It could be Paragraph III-A, coming in between Paragraph III and IV.

That: "Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the 'FTA-CIO', and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, herein jointly referred to as the 'AFL', are and at all times herein alleged were labor organizations within the meaning of Section 2, Subdivision (5) of the National Labor Relations Act.

Trial Examiner Myers: That is why I asked for the stipulation.

Mr. St. Sure: No objection.

Mr. Edises: No objection.

Trial Examiner Myers: Very well. The motion is granted.

Mr. Jennings: May this be off the record?

Trial Examiner Myers: Let us take a short recess, instead of going off the record. That will give me a chance to read the pleadings.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Very well. Will you call your first witness?

Mr. Jennings: Mr. Examiner, we have discussed off the record with counsel the method which we think will expedite this case somewhat. It will require a departure from the technical niceties of the presentation of the case, in that I will in effect be offering part of the Respondents' case, and I will be offering in effect part of my rebuttal in connection with the case in chief. I think that is the only way this case can be actually understood and tried. That is, I could technically prove the discharges, and they could come in and prove the contract, and then I could come back and prove the other things in connection with the contract.

I would prefer, and I think all counsel would prefer, that we get right into the issues of the case, instead of proceeding in that fashion.

Trial Examiner Myers: There will be no objection.

Mr. Jennings: I should like therefore at this time to offer—perhaps it ought to be Respondents'—

Trial Examiner Myers: If you are going to offer any papers, you had better offer them as Board's Exhibits.

Mr. Jennings: All right.

As Board's Exhibit 4(a) a copy of a document entitled "Collective Bargaining Agreement Between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions as adopted June 10, 1941, amended January 26, 1942, amended July 10, 1943", with this stipulation, that the contract is not asserted by the Respondent employer to be a closed shop contract, that it does not require employees to maintain their membership in good standing in the contracting union, and that the contract is not urged as a defense of the charge in that sense.

Mr. Tobriner: We certainly do not stipulate to any such characterization of the contract by counsel. [39]

Trial Examiner Myers: Then there is no stipulation?

Mr. Tobriner: There is no stipulation whatsoever on that.

Mr. Jennings: I ask that as an admission by counsel for the Respondent canners, Mr. Examiner.

Trial Examiner Myers: The employer?

Mr. Jennings: Yes, Mr. Examiner.

Mr. Tobriner: I object to any admission by an employer as to the legal effect of the contract. I do not see how counsel can tell us, learned as he may be, what that contract provides. That is a matter

of law and a matter we want to be heard on, as a matter of fact. The contract speaks for itself. I mean, that much we can agree on. The contract can go in, but certainly we do not want any stipulation as to its effect, or admission.

Trial Examiner Myers: What do you say, Mr. St. Sure?

Mr. St. Sure: At several stages of this proceeding, the California Processors and Growers have indicated their position with regard to their interpretation of this contract. I am prepared to state what that interpretation is.

First, in so far as the green book contract that Mr. Jennings has offered, the contract, in a previous phase of this proceeding, in the Bercut-Richards case, which was 20-R-1414, and a large number of other numbers, was identified and described, and it was there indicated that the green book, the printed contract, was extended by an exchange of letters in the form in which it appears in print, according to the contention of the AFL and the employers, to cover the period to March 1, 1946.

In addition to the green book contract and the extension by letters which I have referred to, there have been modifications of that contract made prior to March 1, 1946, in the following respects.

There was a proceeding before the War Labor Board involving the contract and some of its conditions, and that proceedings, although started in the middle of 1944 as a dispute case, did not become final until May or June of 1945, at which time the Order of the National War Labor Board

amending or directing certain changes in the contract, was made a part of the contract. That is, both by an exchange of letters as between the union and the employers, those amendments were actually incorporated in the green book and were effective after that time and over a retroactive period as determined by the War Labor Board. In addition to that, the contract was amended as of the 1st of November of 1945 in connection with certain negotiated wage changes. Those amendments were incorporated in the written supplement to the contract which would vary the terms of the green book. All of those documents that I refer to will be available, these amendments, changes and extensions, and I have told Mr. Jennings that I will supply copies for the record if numbers may be reserved. I do not have them here. [41]

As to the position of the employers with regard to the contract itself, it has been our position——

Trial Examiner Myers: You mean the green book contract?

Mr. St. Sure: The green book contract. That, in so far as the union security provisions are concerned, the language of the contract speaks for itself, and there is no express requirement in the written contract that the employees should maintain good standing in order to continue their employment. The contract does provide that new employees shall affiliate with the Union. It does provide that there shall be preferential employment of non-employed Union members. It provides for certain clearance procedures in connection with the

hiring practices set up in the contract, but there is no express provision with regard to discharge for lack of good standing. However, the practice in the industry over a period of years was to maintain a Union shop condition in that only AFL employees were in the plants over a period of many years, and there will be testimony in this particular case with regard to the administration of the contract in operation.

In addition to that, in this case there is, in the instance of the G. W. Hume Company, a supplemental arrangement or agreement which likewise has been ordered, which provided for a check off of dues on a compulsory basis for this particular plant.

All of those facts, and circumstances, added together, constitute the employers' position with regard to this contract.

So far as the written document itself is concerned, I think it is sufficient to say that it speaks for itself. We believe the language is plain, that a reading of it, although it is a long document, will disclose that there is no express written requirement that requires written notice for lack of good standing. However, the Board has seen fit to classify it as a closed shop agreement.

Trial Examiner Myers: When you said the "Board", what did you mean?

Mr. St. Sure: I meant the National Labor Relations Board decision, as well as the letter of Chairman Herzog to Congressman Anderson.

But, in the decision of the Berent-Richards case

and in the opinion of the Board—which we do not feel is anything but surplusage, but as long as it happens to be the matter of interest, one of the views the Board expressed is that this is in fact a closed shop contract, despite the fact that in the oral argument before the Board in Washington just last January I expressed the views that I am now expressing as to the employers' idea of what the contract amounts to. [43]

Mr. Jennings has a certified excerpt from the statements made by me in Washington, at least as the Reporter heard them. If Mr. Jennings is going to offer it, I should like to be able to translate them into English, because the Reporter apparently had been talking some language which I cannot understand upon re-reading it. I do not think the statement that I made in Washington, as it appears in the Reporter's record, would add very much to the point of view of enlightenment in so far as this record is concerned, because it does not seem to be English.

Mr. Tobriner: If I may be heard on the same subject matter for just a moment in regard to the position of the Board here as to this contract, I submit it was argued before the Board, and that we have a ruling or an opinion or a provision, whatever it is to be called by counsel for the Board, in the following language, which is in the same paragraph to which counsel already referred.

Trial Examiner Myers: That is the Supplemental Decision?

Mr. Tobriner: Yes, the Supplemental Decision.

Trial Examiner Myers: On what page?

Mr. Tobriner: On Page 5. It is the last line there, Mr. Trial Examiner. [44]

Trial Examiner Myers: Before Footnote 15?

Mr. Tobriner: No, Footnote 12. It is in the text of the Decision, right ahead of Footnote 12.

Trial Examiner Myers: You mean, at the top of the page?

Mr. Tobriner: It is the last line of the Decision, right above the footnote there, the last line on that page of the text of the Opinion. It reads as follows:—

Have you found that, Mr. Trial Examiner?

Trial Examiner Myers: Go ahead.

Mr. Tobriner: “In this state of the record, no legal effect may be given to the closed-shop provision contained in the current collective agreement after their expiration date;”

Trial Examiner Myers: Then comes Footnote 15?

Mr. Tobriner: Yes, then comes Footnote 15. It then says:

“Moreover, no requests for discharges resulting from activity in the election—”

Trial Examiner Myers: That is all right.

Mr. Tobriner: Yes. I call to the attention of the Trial Examiner that the Board language is very explicit. It says that no legal effect may be given to the closed shop provisions after their expiration date, the expiration being March 1, 1946. These very charges, evidently, as set forth in the complaint, occurred prior to March 1, 1946. [45]

Therefore, I want the Trial Examiner to recognize it as our position. The Board has ruled in this matter, and the Regional Office now is taking a contrary position to the National Labor Relations Board and attempting to blow hot and cold in the same paragraph at the same time, a rather confusing and troubling position, but we are getting used to that.

Mr. St. Sure: I would like to comment merely: I mentioned the Board reference to the contract, its characterization of it is as a "closed shop agreement", rather than to point up again some of the confusions which the employers have had to attempt to live with in the situation and to be bound by the Board's characterization of the contract, because I do not want to be in the position of blowing hot and cold, as the Board apparently has done and continues to do in these proceedings.

It is a matter of historical interest to us that the Board characterized the contract as a "closed shop agreement", and then seeks to prosecute us because we executed our rights under the contract as if it were a closed shop. That is merely one of the many anomalies in this entire situation, and I refer to it for that reason only.

Mr. Edises: Mr. Examiner?

Trial Examiner Myers: Yes, sir.

Mr. Edises: I think that a great deal of "sound and fury" [46] is being created in regard to the language which the Board used in its Supplemental Decision.

Mr. St. Sure: May the record indicate that my

voice was modulated, that I was not creating "sound and fury", because this will go into a cold record.

Trial Examiner Myers: Nobody has raised their voice above a normal speaking voice.

Mr. Edises: That refernece had nothing to do——

Trial Examiner Myers: Let us not get into those characterizations. All I have before me now is an offer by Mr. Jennings, offering the contract in evidence.

Mr. Jennings: May I make a number of offers in connection with that, which have been brought up by Mr. St. Sure's statement?

I should like to request that Board's 4 (b) be reserved for the written supplement to the proposed Board's Exhibit 4 (a), and that Board's Exhibit 4 (c) be reserved for the exceptions which were issued relating to the WLB Directive.

You will have that, Mr. St. Sure?

Mr. St. Sure: Yes.

Mr. Jennings: Those are the only two additional documents that we should have.

Mr. St. Sure: That is right, according to my recollection. If there are others that I find I have overlooked or neglected, we will produce them, but those are the only [47] changes that I recall.

Trial Examiner Myers: The only thing that you are offering now is that green book contract, is that right?

Mr. Jennings: That is right, Mr. Examiner.

Trail Examiner Myers: Is there any objection to that going in evidence, gentlemen?

Mr. Edises: No objection.

Mr. Tobriner: No objection, so long as it defines the contract in the language which Mr. Jennings points out.

Trial Examiner Myers: There is no stipulation. Nobody is stipulating to anything.

There being no objection, the book is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit 4 (a).

(The document heretofore marked Board's Exhibit No. 4 (a) for identification was received in evidence.)

Trial Examiner Myers: I will also request the Reporter to please reserve for further offer 4 (b) and 4 (c), for the presentation of the same and other documents.

Mr. Jennings: I will have copies of those tomorrow.

In connection with that matter, Mr. Examiner, and in view of the statements that have been made here, I should like to offer as Board's Exhibit 5 a copy of a letter on the letterhead of the California Processors and Growers, Inc., dated November 20, 1945, addressed to California State [48] Council of Cannery Unions, signed by Mr. St. Sure and by Mr. Bristow, and ask permission to substitute two clean copies for this one, which is somewhat marked up.

Trial Examiner Myers: Is there any objection to that letter going in evidence, gentlemen?

Mr. Tobriner: May I have a moment, Mr. Trial Examiner, to examine it?

Trial Examiner Myers: Certainly.

(Brief pause.)

Trial Examiner Myers: Any objection?

Mr. Tobriner: Mr. Trial Examiner, I have a little——

Mr. St. Sure: I have no objection to the letter being offered, since I wrote it, I believe, but it does remind me of a further situation which we might as well have before the Trial Examiner in connection with this very proceeding.

The green book contract which you have in your hand and which has been offered here in evidence, provides that in the event that there should be any dispute with regard to the non-affiliation of employees in any of the plants covered by the contract, that that dispute shall be resolved by reference to an Adjustment Board. In the event the Adjustment Board does not reach a decision, it shall be referred to arbitration. The determination of the Arbiter is to be final and binding on the parties in connection with the question of either affiliation or discharge. [49]

The very issue in this case involving the employees whose names are set forth in the complaint filed by the National Labor Relations Board has, under the contract procedures, been submitted to arbitration, the agreement of the parties being that the Arbiter shall be named by the Labor Department and shall be a member of the staff of the Conciliation Service of the United States Department of Labor.

By that stipulation, which was accepted by the Department of Labor Conciliation Service, the issues in this matter, we believe, under the contract proceedings, are now pending before another agency

of Government which will attempt to resolve the issues and determine the rights of the employers, the workers and the parties to the contract.

I mention again, merely as a matter of historical interest, that the Labor Department has found it apparently too hot to handle, and that they have not appointed an Arbiter, although the Conciliation Service agreed that it would do so.

Mr. George Cheney, Commissioner of Conciliation, met with the parties to discuss preliminarily the matter of arbitration, but subsequently has advised us in writing that he cannot act, or that he declines to act, and the matter is still pending before the Conciliation Service of the Department of Labor. [50]

I mention that in connection with this letter, because the letter specifically refers first to the fact that we have expressed our view that the terms of the contract do not require discharge, but that there is a procedure under the contract for the settlement of disputes of this kind by arbitration.

Mr. Edises: I would like to point out to the Examiner that the existence of such a provision in the contract could have no legal effect whatever on the authority of the Board for the reasons provided in Section 10 (a) of the Act, namely, that the power of the Board to prevent the commission of unfair labor practices is exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Simply so that the record may be complete, I want to indicate to the Examiner that the action of

the Labor Department in going ahead with that arbitration in spite of the pendency of these unfair labor practice charges has been the subject of complaint by FTA-CIO nationally through the Department of Labor, and that may have something to do with their failure to go ahead.

Mr. Tobriner: Merely in order that our position may be clear on that, Mr. Trial Examiner, the Board has ruled in two decisions, first in the direction of elections, which is [51] Board's Exhibit 2, and secondly in the Supplemental Decision, that a valid contract exists by and between C. P. & G. and the AFL. That is the official ruling of the Board, and there is no question about that, in two different decisions. However, that contract has certain procedures set up under it. One of those procedures is if there is a difficulty, it shall be determined by arbitration.

We have proceeded under the valid contract and tried to determine it by arbitration, and are so doing. Nevertheless, despite the ruling of the Board in two instances, it now charges us to be in some manner violating the National Labor Relations Act, which we find difficult to understand, to put it very mildly.

Trial Examiner Myers: Is there any objection to the paper going in evidence?

Mr. Tobriner: No objection.

Trial Examiner Myers: Mr. St. Sure?

Mr. St. Sure: No objection.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it Board's Exhibit No. 5.

(The document referred to was marked Board's Exhibit No. 5, and was received in evidence.) [52]

BOARD'S EXHIBIT No. 5

California Processors & Growers, Inc., Financial
Center Building, Oakland 12, California.

November 20, 1945.

California State Council of Cannery Unions
1916 Broadway
Oakland, California

Gentlemen: Atten: Mr. Hal P. Angus

This will acknowledge receipt of your letter of November 17, 1945 concerning a bulletin alleged to have been issued by Local 82 FTA-CIO, and quoted by you as follows:

"We have reached an agreement with the California Processors and Growers that no one has to pay dues to the AFL to work in the canneries. Every FTA-CIO member should immediately sign a revocation slip and start paying dues to Local 82, FTA-CIO."

Replying to your demand for "an official statement . . . as to whether or not any understanding or

agreement has been reached between the FTA-CIO and the California Processors and Growers," the following is our response:

1. California Processors and Growers, Inc., has reached no agreement with FTA-CIO that "no one has to pay dues to the AFL to work in the canneries."

In discussions with representatives of FTA-CIO, we have reiterated our position that the existing collective bargaining agreement will be observed by California Processors and Growers, Inc. Since these discussions, we have received a telegram from Edgar Warren, Director of Conciliation Service, U. S. Department of Labor at Washington, D. C., advising us that the contract with the AFL remains "in force and effect until March 1, 1946."

2. California Processors and Growers, Inc. has advised representatives of FTA-CIO that new employees are required to affiliate with the AFL as a condition of employment, and that canneries are required to supply the AFL unions with lists of all employees who fail to present evidence of AFL union membership.

In discussions with representatives of FTA-CIO, we have outlined the procedures followed under the contract, and have advised them that despite the fact that we are not obligated by contract to discharge employees for failure to maintain union membership, nevertheless all disputes arising in this connection are required to be submitted to the Central Adjustment Board, under the contract, for final determination.

We have in no wise changed our position concerning payment or non-payment of dues, nor have we reached any agreement with FTA-CIO concerning revocation slips, which are controlled by the 1945 W.L.B. Directive Order.

A copy of this communication is being sent to the officials of FTA-CIO.

Yours truly,

/s/ J. PAUL ST. SURE,
Attorney

/s/ J. W. BRISTOW,
Secretary-Treasurer.

JPSS/OB-L

Mr. Jennings: Mr. Examiner, as Board's Exhibit 6, I should like to offer in evidence a certified copy of an excerpt from the oral argument held before the Board on January 24, 1946, in the matter of Berent-Richards, et al, 20-R-1414. I have shown that to Mr. St. Sure, and as he indicated previously, he has some doubt that those words are exactly what he said.

Mr. St. Sure: I do not know whether you desire to have me try to correct the statement which was made. I simply state that even though the Reporter certified to the language, that I think it is largely meaningless and I did not use the language which is being offered by counsel. However, if there is any value that he feels is in the statement, if any sense can be made from the Reporter's transcription

of it, I have no objection to it going in. It was rather was a matter of pride that I made the objection that I did. I hate to be in the position of having a record disclose that I used such very bad English.

Mr. Jennings: I am interested in the assumption, Mr. Examiner, and not in the precise words. There may be some grammatical expressions there which I am sure Mr. St. Sure would not use, but I am interested only in the substance of the statements made.

Trial Examiner Myers: Is that all right, Mr. St. Sure?

Mr. St. Sure: Probably it is false pride on my part, as [53] I say. I do not think there is much conflict in the sense that may be made from the language as it appears.

Trial Examiner Myers: What did they have, a stenotypist?

Mr. St. Sure: I have forgotten. I was curious after I read the record, and tried to remember, but I do not recall that the young man who was there seemed to go right along as if he were getting every word of it, and interrupted none of us, even though the argument went rather rapidly. But certainly, the results were peculiar. He even had the Board members saying things that certainly surprised me.

Mr. Edises: It was not a stenotypist.

Mr. Tobriner: May I suggest, if that is to go in, that the entire record of the hearing go in.

Trial Examiner Myers: You mean the entire oral argument?

Mr. Tobriner: Yes. I think my statements ought to go in, too. Why should a piecemeal fragment of

an argument that is hardly intelligible, as a matter of fact, go in?

Mr. Edises: Mr. Examiner, as I understand it, the only purpose of the offer is to show an admission by counsel for the Respondents on a limited point, namely, on whether or not it is a closed shop contract.

Mr. St. Sure: I do not like to have it characterized by the term "admission". It certainly contains, as my previous statement contained, an outline of the position of [54] the employers. Whether it be an admission or contention, I tried to outline what our interpretation of the contract is.

Mr. Jennings: My only purpose, Mr. Examiner, is to indicate what position Mr. St. Sure took before the Board with regard to the contract.

Mr. St. Sure: I do not contend there is any inconsistency with the statement I made this morning.

Mr. Jennings: You do not contend that there is any inconsistency?

Trial Examiner Myers: Do you want it in, anyway?

Mr. Jennings: Yes.

Trial Examiner Myers: Any objection?

Mr. Tobriner: I object, unless the whole record goes in.

Trial Examiner Myers: You can put in the balance, if you wish.

Is there any objection to this part going in?

Mr. Tobriner: My only basis of objection is that it is an excerpt and does not show the rest of the argument.

Trial Examiner Myers: You may put in the bal-

ance, if you think it is necessary and pertinent to the issues in this case.

I will overrule the objection, and receive the paper in evidence. I will ask the Reporter to please mark it as [55] Board's Exhibit No. 6.

(The document referred to was marked Board's Exhibit No. 6 and was received in evidence.)

BOARD'S EXHIBIT No. 6

United States of America
National Labor Relations Board

I, John E. Lawyer, Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of excerpts from pages 90 and 91 of the stenographic transcript of oral argument held before the National Labor Relations Board on January 24, 1946, "In the Matter of Burcut Richards Packing Company, et al. and Cannery & Food Process Workers Council of the Pacific Coast and its affiliated unions; Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O.," the same being Case No. 20-R-1414, et al.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of March 14, A.D. 1946, at Washington, D. C.

[Seal] /s/ JOHN E. LAWYER,
Chief, Order Section.

* * *

[90] Mr. Reilly: Are you thinking of "closed shop?"

Mr. St. Sure: No, sir. The contract we have provides that initial employment shall call for affiliation with the union, but the contract itself does not expressly require that we discharge people for not maintaining good standing in the union.

[91] A. F. of L. maintains the side that we have a union shop and should discharge people. We are in that conflicting position. The contract does not express it. The A. F. of L. observes us as a union shop and they have picketed us for not doing so. That contract is in effect until the 28th of February. It is our position that it is in effect, because the Board assumed that it was in its decision; although I understand some question has been raised to that. We assume it is in effect.

* * *

[Endorsed]: Received March 19, 1946.

Mr. Jennings: There is just one further matter, Mr. Examiner, which has been brought up by the discussion here. That is the position of the parties taken upon the assumption that the Board decided in the representation case, in its supplemental decision, that this was a closed shop contract. The Examiner is aware that a contract is often described in shorthand terms as "closed shop," in those cases in which it has any form of union preference in it. This contract does provide for preference in em-

ployment to that extent. To that extent perhaps it is broadly described as "closed shop." It is not a closed shop in the sense it provides for discharge of those who fail to maintain membership in good standing.

Trial Examiner Myers: In other words, the contract speaks for itself.

Mr. Tobriner: Mr. Examiner, I am not going to argue on this now, but I don't want the record to show that I have not answered it. I think Mr. Jennings characterized it incorrectly, but this is not the occasion to argue it.

Trial Examiner Myers: I agree with you.

Mr. Jennings: As Board's Exhibit 7, Mr. Examiner, I will offer in evidence a copy of a supplemental agreement headed "Dues Collections and Check-Off," dated August 21, 1944, between the George W. Hume Company and Cannery Workers Union No. 22382.

Trial Examiner Myers: Is that the same Respondent as in this case, G. W. Hume?

Mr. Jennings: Yes, Mr. Examiner, that is correct.

Trial Examiner Myers: Is that right, Mr. St. Sure? George W. Hume and Company is the same as G. W. Hume Company?

Mr. St. Sure: I assume so. Yes, that is correct.

Trial Examiner Myers: Is that correct, Mr. Tobriner?

Mr. Tobriner: I really do not know. I have no reason to think otherwise.

Mr. St. Sure: Yes, I am sure that is correct.

Trial Examiner Myers: Is there any objection to this paper going in evidence, gentlemen?

Mr. St. Sure: I have none.

Mr. Tobriner: No, I have none.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the Reporter to please mark this Board's Exhibit No. 7.

(The document referred to was marked Board's Exhibit No. 7 and was received in evidence.)

BOARD'S EXHIBIT No. 7

Dues Collection and Check-Off

The Company hereby agrees to deduct from the pay of each employee employed by the Company who is covered by this agreement all Union dues and assessments, and for this purpose the Union shall provide the Company, on or before the first day of each month, the amount of dues payable per month to the Union by each member. Said dues shall be deducted from the pay check of the employee on any payday that falls on a day following performance of three days' work by the employee in any calendar month.

The Company will promptly notify all employees of these conditions by placing an appropriate statement thereof on the bulletin board in the plant of the Company.

If any new assessment shall be levied as against members of the Union employed by the Company,

such assessments must first be approved by the Union and notice thereof given to the Company before such assessments can be deducted from the salary of the employees by the Company.

Any sums deducted by the Company for the benefit of the Union in any month shall be payable to the Secretary-Treasurer of the Union on or before the 25th day of the following month. The Secretary-Treasurer of the Union shall furnish an appropriate receipt to the Company upon receipt thereof. The Company shall not be liable to the Union for any sums other than those collected by the Company.

The Company and the Union shall work out a mutually satisfactory agreement, by which the Company will furnish the Secretary-Treasurer of the Union monthly, a record of the dues, from whom the deductions have been made, together with the amount of such deductions.

In Witness Whereof we have hereunto set our hands and seals this 21st day of August, 1944.

GEORGE W. HUME
COMPANY.

By R. G. HUME,
President.

CANNERY WORKERS'
UNION # 22382.

[Seal]

R. M. TOMSON,
Secretary-Treasurer.

Reference Is Made to "Dues, Collection and Check-Off Agreement Dated the 21st day of August, 1944.

It is hereby mutually agreed and understood that this letter becomes a part of the above-mentioned Agreement for the purpose of fixing possible expiration date of the Agreement by notification by either party on or before March first of any year; the termination of the Agreement to become effective if notice is filed by either party on or before 12 o'clock noon on the first day of March of any year.

GEORGE W. HUME
COMPANY.

By R. G. HUME.

Accepted This 21st day of August, 1944.

CANNERY WORKERS'
UNION No. 22382.

[Seal] By R. M. TOMSON,
Secretary-Treasurer.

Mr. Jennings: As Board's Exhibit 8, Mr. Examiner, I offer in evidence a Memorandum of Agreement dated March 25, 1946, between G. W. Hume Company and the A.F.L.

Trial Examiner Myers: Is there any objection, gentlemen?

Mr. Tobriner: No objection.

Mr. St. Sure: I have none.

Mr. Edises: No objection.

Trial Examiner Myers: There being no objec-

tion, the paper is received in evidence. I will ask the Reporter to please mark it as Board's Exhibit No. 8.

(The document referred to was marked Board's Exhibit No. 8 and was received in evidence.)

BOARD'S EXHIBIT No. 8

Memorandum of Agreement

This Memorandum of Agreement, made and entered into this 25th day of March, 1946, by and between G. W. Hume Co., located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, A. F. of L., and Cannery Workers' Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., hereinafter referred to as Union,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. It shall be a condition of employment with the employer that all employees covered by this agreement shall become and remain members of the Union in good standing. Present employees who are not as of the date of this agreement members of the Union must become members within ten (10) days from the date hereof. Any new employee shall be required within ten (10) days of the date of hiring to become a member of the Union and thereafter remain a member in good standing.

Persons who fail to maintain good standing in

the Union in accordance with the By-Laws thereof shall be discharged within thirty-six (36) hours after the company is so notified by the Union.

In the hiring of additional employees, the employer shall give preference to unemployed members of the local Union provided such individuals have the necessary qualifications and are available within forty-eight (48) hours after being notified. As a basis for preferential consideration unemployed members of the local Union shall be required to present a clearance card from the local Union, evidencing the fact of their paid-up membership.

2. Any adjustment in wages, hours or conditions, which may hereafter be agreed upon by the parties, shall be effective as of March 1, 1946, and retroactive to that date.

In Witness Whereof, the parties hereto have caused this Memorandum to be signed by their duly authorized officers this 25th day of March, 1946.

Employer

G. W. HUME CO.,

By R. G. HUME.

CALIFORNIA STATE COUN-
CIL OF CANNERS, A.F.L.

By /s/ HAL P. ANGUS.

CANNERY WORKERS
UNION, LOCAL 22382,

By /s/ H. C. TORREANO.

Mr. Jennings: May I proceed?

Trial Examiner Myers: Proceed.

Mr. Jennings: Mr. Heagle, please.

IRWIN C. HEAGLE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Irwin C. Heagle.

Trial Examiner Myers: Will you please spell your last name for the Reporter?

The Witness: H-e-a-g-l-e.

Trial Examiner Myers: Where do you live, Mr. Heagle?

The Witness: At Turlock. 617 East Olive, Turlock. [58]

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Heagle, where are you employed at the present time?

A. The G. W. Hume Company at Turlock.

Q. In what capacity? A. As boilerman.

Q. How long have you been employed by that Company? A. Fourteen years.

Trial Examiner Myers: For the past 14 years?

The Witness: Yes.

Q. (By Mr. Jennings): During the period of time that you were employed down there, did you ever become a member of the Cannery Workers Union Local No. 22382? A. I did.

Q. Did you hold any office in that Union?

A. I believe in 1943 I was appointed as Shop Steward at the plant, and on the Executive Board of the Local.

(Testimony of Irwin C. Heagle.)

Q. That Local was known as a "Federal Local," is that not true? A. That is correct.

Q. Chartered directly by the American Federation of Labor? A. That is correct.

Trial Examiner Myers: When did you join?

The Witness: I believe it was 1939.

Q. (By Mr. Jennings): I will show you, Mr. Heagle, a document which is here as Board's Exhibit No. 7, "Dues Collections and Check-Off," contract between the Hume Company and the Federal Local. Are you familiar with that agreement?

A. I was familiar with it at the time, yes.

Q. Mr. Heagle, did the membership of Local 22382 vote to sign such a contract with the Hume Company? A. Yes.

Mr. Tobriner: Objected to on the ground it is utterly immaterial. The contract is in evidence. To go back into the internal functions of the Union will take a lot of unnecessary time.

Trial Examiner Myers: What have you to say?

Mr. Jennings: I merely wanted to establish that this contract was signed with the knowledge and agreement of the Union, Mr. Examiner.

Trial Examiner Myers: You mean, the membership?

Mr. Jennings: That is right. There is nothing hidden about it.

Trial Examiner Myers: Will you answer the question, please? A. It was.

Q. (By Mr. Jennings): How in practice, Mr. Heagle, was that contract administered? How were the dues checked off and paid to the Union? [60]

(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Objected to on the ground that it is again immaterial. I do not understand why we care now how the contract was administered with regard to dues collection.

Trial Examiner Myers: Overruled.

Mr. Tobriner: Maybe I do not understand the Board's position.

Trial Examiner Myers: Overruled.

A. I did not have anything to do with the deduction of the dues, but as I understand it, the payroll was picked up by the office of 22382.

Mr. Tobriner: I move to strike, Mr. Examiner. He does not understand. He just said so.

Trial Examiner Myers: Do not break into the witness. Let him finish.

A. (Continuing): It was taken into the Union office, and those members were checked off that owed dues or initiation fees, and it was then returned to the Company whereby the Company deducted those dues from the checks.

Mr. Tobriner: All right. I will now make the motion——

Trial Examiner Myers: To strike the whole answer?

Mr. Tobriner: To strike the portion after the part where he said he did not know but he understood.

Trial Examiner Myers: All right. Strike the whole answer. Will the Reporter please read the question? [61]

(The question was read by the reporter.)

(Testimony of Irwin C. Heagle.)

The Witness: My answer did not mean——

Trial Examiner Myers: Just answer the question.

The Witness: Oh, you want me to re-answer it again?

Trial Examiner Myers: Just answer the question.

Mr. Jennings: I will withdraw that question, Mr. Examiner.

Q. (By Mr. Jennings): Mr. Heagle, prior to the time that contract was entered into, who collected the dues in the plant?

A. I did, in 1943.

Q. How did you collect them?

A. People came to the boiler room and paid their dues.

Trial Examiner Myers: You will have to talk up a little louder, please.

Q. After that contract was entered into, did the employees pay their dues to you?

A. They did not.

Q. Did you pay your dues directly to the Union?

A. I was eliminated from paying dues on account of being Shop Steward.

Q. When employees were put to work by the Company, Mr. Heagle, during the time that you were Shop Steward, did the Company notify you of their employment, when new employees came to work? [62]

A. As a general thing, yes.

Q. What was done?

A. They were sent to me for a clearance.

(Testimony of Irwin C. Heagle.)

Q. What do you mean "a clearance?" Could you state for the record?

A. Well, it is a clearance issued by the Local to show that the party or parties were in good standing with the Union at that time.

Trial Examiner Myers: Are you still Shop Steward?

The Witness: I don't believe I have the right to say I am Shop Steward. I am acting as Shop Chairman.

Trial Examiner Myers: How long were you Shop Steward?

The Witness: Approximately two years, I believe.

Trial Examiner Myers: You mean, '43 and '44?

The Witness: '43 and '44.

Trial Examiner Myers: What were you doing in '45?

The Witness: And part of '45, up until June, 1945.

Trial Examiner Myers: Then you became Shop Chairman?

The Witness: Chairman of the Shop Committee, I believe they call it.

Trial Examiner Myers: Oh. Is that what they call it?

Q. (By Mr. Jennings): Mr. Heagle, during the period of time that you were Shop Steward, either before or after the check-off contract which is here in evidence as Board's Exhibit No. 7, did you, on behalf of the Local Union, ever make a request of

(Testimony of Irwin C. Heagle.)

the Company that it discharge employees for failure to maintain their membership in good standing in the Union?

Mr. Tobriner: What are the dates of that, Mr. Jennings? A. Not that I can remember.

Mr. Tobriner: Just a minute.

What was the date of your question?

Mr. Jennings: During the time that he was Shop Steward.

The Witness: Well——

Trial Examiner Myers: Wait a minute. He objected.

Mr. Tobriner: I did not object.

Trial Examiner Myers: Oh. You withdraw the objection?

Mr. Tobriner: I simply asked the question.

Q. (By Mr. Jennings): Prior to the time that you were Shop Steward, did you ever know of any other representative of the Union making such request of the Company?

A. Not that I know of, no.

Q. To your knowledge during any of the time that you were employed out at the Hume Company, was any employee fired at the request of the Union for failure to maintain membership in good standing in the Union?

A. Not to my knowledge.

Q. Calling your attention to the spring of 1945, Mr. Heagle, do you know Mr. Torreano?

A. I do. [64]

(Testimony of Irwin C. Heagle.)

Q. His initials are H. C. Torreano?

A. I wouldn't be sure about that.

Trial Examiner Myers: Do you know his first name?

The Witness: No, I don't.

Trial Examiner Myers: Maybe the parties will stipulate what his name is.

Mr. Tobriner: We will stipulate to the initials.

Trial Examiner Myers: What are they?

Mr. Tobriner: H. C.

Q. (By Mr. Jennings): In the spring of 1945, did you know a Mr. Brown? A. I did.

Q. Do you know what labor organization those gentlemen were identified with, if any, in the spring of 1945?

A. Mr. Torreano was identified as a member of the Teamster Organization, and although it never was stated in so many words, Mr. Brown was working with Mr. Torreano at the time, and I surmised he was still identified with the Teamster Organization.

Mr. Tobriner: I move the surmise of the position of these people be stricken.

Trial Examiner Myers: Strike it out.

What is Mr. Brown's first name?

Mr. Tobriner: L. H. Brown.

Trial Examiner Myers: Do you know what position he holds, if any, in the Teamsters?

Mr. Tobriner: At which time? Before we can put that in by evidence, or later, Mr. Trial Examiner.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Very well.

Q. (By Mr. Jennings): Do you recall an occasion in the spring of 1945 when Mr. Torreano and Mr. Brown visited the Hume plant in Turlock?

A. I do.

Q. Do you remember approximately when that was? What month it was?

A. I believe it was some time in the month of June.

Q. Of 1945? A. Of 1945.

Q. At the time these gentlemen visited the plant, was there any conference held with the employees?

A. There was an impromptu meeting held, yes, in the warehouse.

Q. About what time of day?

A. I don't—I can't tell you exactly what time of day it was.

Trial Examiner Myers: Was it during working hours?

The Witness: It was during working hours, yes.

Q. (By Mr. Jennings): Was any representative of Management present at the meeting?

A. Mr. Fordham. [66]

Trial Examiner Myers: Who?

The Witness: Mr. Fordham.

Trial Examiner Myers: How do you spell that?

The Witness: F-o-r-d-h-a-m.

Trial Examiner Myers: What is his first name?

Mr. Fordham: Free, F-r-e-e.

(Testimony of Irwin C. Heagle.)

Q. (By Mr. Jennings): What was Mr. Fordham's position with the Company?

A. I believe Superintendent.

Q. Were Mr. Torreano and Mr. Brown present at the meeting? A. They were.

Q. What employees were present?

A. Do you want them by name, or——

Q. No, just by description.

A. All regulars; the warehouse crew and the front end, both.

Q. All the regular employees? A. Yes.

Q. By "regular" you intend to distinguish those employees from the seasonal employees?

A. That's right.

Q. Where was this meeting held?

A. In front of the office, in the warehouse.

Q. About how many employees were present?

A. Somewhere between 20 and 30, I believe.

Q. Will you tell me what was said at the meeting by the gentlemen who attended, and what happened?

A. Well, they broached us about affiliating.

Trial Examiner Myers: Now, wait.

Q. Who are "they?"

A. Mr. Torreano—I believe Mr. Torreano done the talking, and he broached us about affiliating with the Teamsters, and some of us asked him why we could not hold a vote on that, and he told us we were not entitled to a vote. After that, the discussion was general.

(Testimony of Irwin C. Heagle.)

Q. Did Mr. Fordham say anything?

A. Mr. Fordham did not say nothing.

Q. How were you notified that there was to be a meeting?

A. Mr. Fordham came and told us.

Q. Did the employees join the Teamsters?

A. They did not.

Q. What did you do? A. Refused.

Q. At that time were your dues in the Federal Local being checked off under the contract, Board's Exhibit 7?

A. They were for the month of June, yes.

Q. Did any change in that situation occur after the month of June? A. It did.

Q. What happened? [68]

A. We signed revocations, had Mr. Hume stop deducting the dues from our checks.

Trial Examiner Myers: What did you sign?

The Witness: Revocations.

Q. (By Mr. Jennings): Were those written or oral revocations? A. They were written.

Q. Did you make any oral request to have your dues deductions stopped?

A. I did. We went to Mr. Hume and asked him to stop deducting, and he told us that we would have to have a written revocation, a written request, according to—I don't just remember what his words were.

Trial Examiner Myers: When did you go?

The Witness: In—I believe it was during the month of June.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: After this meeting, or before?

The Witness: I believe it was after the meeting.

Trial Examiner Myers: Is that R. G. Hume?

The Witness: Yes, Mr. Ray—R. G. Hume.

Q. (By Mr. Jennings): Mr. Hume holds what office in the Company?

A. R. G. Hume? President.

Q. President of the Company.

You signed one of these revocations, is that correct? A. I did.

Q. Were any dues deducted from your check after June of 1945? A. They were not.

Q. You handed the written revocations, then, to the Company? A. Yes, we all did.

Q. And the dues stopped? A. Yes.

Q. When you say "We all did," do you mean the regular employees? A. Yes.

Q. After that time, did you on any occasion see Mr. Torreano or Mr. Brown or any other representatives of the Teamsters in the plant?

A. Very much so.

Q. On how many different occasions?

A. I could not name them.

Q. Were they in there during working hours?

A. During the working hours, yes; it was the non-operating season at that time.

Q. Were you ever—strike that—

Did Mr. Torreano and Mr. Brown call any later meeting than the one that you had described, later on in the season? A. Yes. [70]

(Testimony of Irwin C. Heagle.)

Q. Approximately when did that take place?

A. I believe it was some time in August, just before the start of the peach season.

Trial Examiner Myers: Just before the start of the what?

The Witness: Peach season.

Q. (By Mr. Jennings): That would be in the early part of August, then, would it not?

A. I believe it would, yes.

Trial Examiner Myers: '45?

The Witness: '45, yes sir.

Q. (By Mr. Jennings): Where was that meeting held, Mr. Heagle?

A. It was held in the Women's Check Room in the front end of the cannery.

Q. How were you notified of the meeting?

A. Notified by our foreman.

Q. To attend? A. Yes.

Q. Was that during working hours?

A. It was.

Q. When you got into the Women's Check Room, were Mr. Torreano and Mr. Brown in there?

A. They were.

Q. Were there any other representatives of the Teamsters there? A. They were.

Q. About how many?

A. I believe there were 7 or 8, at least.

Q. Were there any representatives of the Management present?

A. Mr. Gallardo and Mr. Fordham.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: What is his first name?

The Witness: Arthur.

Trial Examiner Myers: what is his position, if any, with the Company?

The Witness: Assistant Superintendent, I believe.

Trial Examiner Myers: Is that right, gentlemen? Assistant Superintendent?

Mr. Gallardo: Correct.

Trial Examiner Myers: Mr. St. Sure?

Mr. St. Sure: That is correct.

Q. (By Mr. Jennings): Was any representative of the C.P. & G. present at this meeting?

A. Mr. Clough.

Trial Examiner Myers: What is his first name?

The Witness: F. S. Clough, C-l-o-u-g-h.

Trial Examiner Myers: What is his connection with the Association?

Mr. St. Sure: He is an employee of the California Processors and Growers.

Trial Examiner Myers: Just an employee?

Mr. St. Sure: Yes, sir. [72]

Trial Examiner Myers: About how many employees of the Hume Company attended that meeting, Mr. Heagle?

The Witness: All the regular workers working at that time. I believe it was between 20 and 30 at the time. I can't remember the exact number.

Q. (By Mr. Jennings): Who did the talking at that meeting?

A. Well, Mr. Clough and Mr. Torreano.

(Testimony of Irwin C. Heagle.)

Q. Who spoke first?

A. I believe Mr. Clough did.

Q. What did Mr. Clough say?

A. He asked us to clear through the Teamsters' Organization in order to keep the plan operating in a peaceful manner so they could pack their peaches.

Q. What do you mean when you say he asked you to "clear through"? What does that mean?

A. He wanted us to sign the clearance slips with the organization, with the AFL.

A. Those are the same sort of clearance slips that you as Shop Steward gave to the employees when they came to work? A. It was.

Q. Did the year round employees customarily clear after the season had started?

A. It had not been customary, no.

Q. Had you ever been required to clear after you had gone to work? [73]

A. Not after we cleared when we first went in, no. As long as we were on the regular list, the regulars never were required to clear.

Q. The contract, Board's Exhibit 4 (a) will bear me out. There is a regular seniority list, is there not? A. There is.

Q. Those employees were not required to clear by the terms of the contract?

A. Not more than the first time; after the first time.

Trial Examiner Myers: Once cleared always cleared, is that it?

(Testimony of Irwin C. Heagle.)

The Witness: That was the understanding, yes.

Mr. St. Sure: I do not know that I want to be in a position of accepting that as the contract provision.

Trial Examiner Myers: The contract still speaks for itself.

Q. (By Mr. Jennings): Did you say anything to that request, Mr. Heagle?

A. Yes, I did.

Q. What did you say?

A. Well, I mentioned the fact that I did not see why we had to clear, why we was required to clear, and I also asked Mr. Clough, if we signed the clearances, that we would be forced, or the other members would be forced to sign check-offs for withholding of dues, and Mr. Clough said that they would not be required, and so we signed, and at that time we all—I went up and signed the first clearance slip.

Trial Examiner Myers: Did you sign the clearance slip?

The Witness: I did, yes sir.

Q. (By Mr. Jennings): Did you sign it right there at that meeting?

A. Right at that meeting.

Q. Who had the clearance?

A. I don't know the man's name.

Q. One of the representatives?

A. One of the parties with Mr. Torreano.

Trial Examiner Myers: Did anybody else sign the clearance that day?

The Witness: We all did.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: All the employees?

The Witness: All the employees, yes sir.

Trial Examiner Myers: That is, all the employees that attended that meeting?

The Witness: That was at that meeting, yes sir.

Q. (By Mr. Jennings): Will you tell me, Mr. Heagle, what you mean by the "dues check-off", what is that?

A. It is a slip authorizing the employer to withhold dues from the employees' wages, to withhold money to pay dues to the Union, that is, signing for it. That is the easiest way out. [75]

Q. You asked whether or not the employees would have to sign such a dues check-off agreement? A. I did.

Q. What was Mr. Clough's answer?

A. He said they would not.

Q. Was Mr. Fordham present at that time?

A. He was.

Q. Mr. Gallardo? A. They were.

Q. Did they say anything?

A. They did not.

Q. They did not contradict Mr. Clough?

A. No.

Q. When you cleared, did you sign any dues check-off? A. I did not.

Q. Or did you sign any thereafter?

A. I did not.

Q. Thereafter at any time did you hear that any employees had been required to sign any dues check-off?

(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Objected to on the ground that what he heard is hearsay.

Mr. Jennings: It calls for merely a "Yes" or "No" answer, Mr. Examiner.

Trial Examiner Myers: I will overrule the objection. The objection was premature.

A. Yes, I have.

Mr. Tobriner: I will object again.

Trial Examiner Myers: Overruled.

Mr. Jennings: I will present further testimony, Mr. Tobriner, but I cannot prove everything by one witness.

Mr. Tobriner: I agree with you.

Q. (By Mr. Jennings): Thereafter did you make any complaint to any representative of Management with regard to that matter?

A. I did, to Mr. Fordham.

Q. What did you tell him?

A. I believe my exact words were that they was double-crossing us.

Trial Examiner Myers: When did you say that?

The Witness: The morning that they registered for the peach run.

Q. (By Mr. Jennings): That was about the 8th of August, 1945, was it not? A. Yes.

Q. Did any change in that situation take place after your complaint to Mr. Fordham?

A. I really don't know.

Q. Do you know whether or not employees continued to sign the dues check-off? [77]

A. By hearsay, yes.

(Testimony of Irwin C. Heagle.)

Q. Did you do anything about that?

Mr. Tobriner: Just a minute.

A. I had them sign revocations. I beg your pardon. I would like to take back that hearsay, if I may.

Trial Examiner Myers: Don't characterize. Just answer the question. We don't care what you call it.

A. (Continuing): Yes. They came to me and signed revocations, myself and a couple of the other boys.

Trial Examiner Myers: Who is "they"?

The Witness: The people that signed the check-offs.

Trial Examiner Myers: How many came to you?

The Witness: I should judge better than 150.

Trial Examiner Myers: When did they come to you?

The Witness: After they had signed their check-offs, within the next few days.

Trial Examiner Myers: Do you mean a few days after August 8, 1945?

The Witness: I would not know the exact date, but it was after the day of registration for the peach run.

Trial Examiner Myers: Do you know about how many days after?

The Witness: No sir, I could not tell you.

Trial Examiner Myers: Within a week, would you say?

The Witness: Yes, I believe it was within a week. [78]

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Maybe you can fix the date by the—were the revocations dated?

The Witness: They were.

Trial Examiner Myers: Go ahead, Mr. Jennings.

Q. (By Mr. Jennings): Did you prepare written or printed revocations, Mr. Heagle?

A. In August, at this time, you mean?

Q. Yes.

A. No. These were—came in a book form. I believe you have a copy of them there.

Q. They were printed revocations?

A. Printed revocations, yes sir.

Q. After you received these revocations, what did you do with them?

A. Our committee took over one copy to Mr. Hume, and turned them in to the office, and the other copy was held by the Union.

Trial Examiner Myers: R. G. Hume?

The Witness: R. G. Humes, in the office of R. G. Hume.

Q. (By Mr. Jennings): That is, the employees themselves did not bring the revocations in, but the Committee did? A. Not at that time.

Q. Did Mr. Hume make any request of you in that connection?

A. Yes. He asked me to have the employees individually bring their revocations in.

Q. Was that done after that?

A. That was.

(Testimony of Irwin C. Heagle.)

Q. You have previously said that the representatives of the Teamsters were in the plant during the summer of 1945? A. Yes.

Q. Were those representatives in the plant during all of the time while you were there?

A. No. At one time we got an injunction forbidding any representative in the plant.

Trial Examiner Myers: Any representative of what?

The Witness: Of any Union.

Trial Examiner Myers: What?

The Witness: A representative of any Union, I believe was the way the injunction read.

Q. (By Mr. Jennings): Was that injunction later dismissed? A. It was.

Q. About when?

Mr. Jennings: We can stipulate——

Mr. Tobriner: About three or four days later, wasn't it, as soon as we could get down here and have it heard?

The Witness: Ten days, I believe was the time.

Trial Examiner Myers: Who got the injunction?

The Witness: Well, I think—to name parties, it was the Secretary-Treasurer of the Union at that time, and my name was on the request for the injunction. [80]

Mr. Tobriner: What Union are you speaking about now?

The Witness: The independent.

Mr. Jennings: May it be stipulated that that injunction was dismissed or released in the early

(Testimony of Irwin C. Heagle.)

part of September of 1945? I do not have the exact date. I know we took an adjournment in our hearing so you could go down there to that case.

Mr. Tobriner: It will be stipulated that it was in effect less than, I think ten days, or maybe even seven.

Trial Examiner Myers: Ten days from what date?

Mr. Tobriner: From the time it was issued, whatever date that was. It was a temporary restraining matter, as a matter of fact, dissolved upon the hearing of the Order to Show Cause.

Mr. St. Sure: The action referred to was an action of the Superior Court of the County of Stanislaus, No. 30224, with a number of individuals as plaintiffs and a number of individuals and unions and corporations as defendants. An order was issued, a temporary order returnable the 23rd day of August, 1945. It was issued on the 13th day of August, 1945. It was dissolved or dismissed, as I remember, either the 23rd or 24th.

Trial Examiner Myers: Of August.

Mr. St. Sure: Of August, yes sir.

Trial Examiner Myers: Very well.

Mr. Jennings: I am willing to accept that as a stipulation of facts.

Trial Examiner Myers: Do you, Mr. Tobriner?

Mr. Tobriner: Yes, so stipulated.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes, I so stipulate.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Thank you.

Q. (By Mr. Jennings): After the dissolution of that restraining order, were representatives of the Teamsters in the Hume plant?

A. They were.

Q. Were they in the plant prior to the date of the Board's election? A. They were.

Q. Were they there after the election?

A. After the election was held was during the slack season of the plant, and I believe they were in there, yes. I seen them there, but of course there wasn't much there for them to do at that time, because there was just the regular crew of workers.

Trial Examiner Myers: Did they work each day?

The Witness: No, not every day.

Trial Examiner Myers: How many days?

The Witness: I could not tell you.

Trial Examiner Myers: More than one day a week? [82]

The Witness: At times, yes.

Mr. St. Sure: Mr. Trial Examiner, I wonder if I might interrupt a moment?

Further identifying the injunction proceedings that have been referred to, I mentioned that the plaintiffs were individuals, as shown in the caption of the complaint, but in their pleading they allege that they were acting in behalf of and in the name of an organization known as "Cannery and Food

(Testimony of Irwin C. Heagle.)

Process Workers Union of the Modesto Area'', which they alleged to be chartered by the Cannery and Food Process Workers Council of the Pacific Coast.

I believe that is correct, is it not?

Mr. Tobriner: That is correct.

Mr. St. Sure: And that Mr. Heagle was alleged to be the President of that Union, the Witness.

Trial Examiner Myers: Were all the individuals there employees of G. W. Hume?

Mr. St. Sure: I believe not. There were other canners, members of the C.P. & G. as well.

Trial Examiner Myers: I mean, as party plaintiffs.

Mr. St. Sure: As party plaintiffs they do not allege that they are employees of any particular company. A number of individual companies are named as defendants. I imagine that there may be employees of others.

Trial Examiner Myers: I was wondering whether it was against G. W. Hume. [83]

Mr. St. Sure: It was against a number of the local canneries

Trial Examiner Myers: Oh, I see.

Mr. Jennings: Did we have an answer to that question?

(The record was read.)

Mr. Jennings: I should like to ask a stipulation of counsel, if I may, that the election among the employees of the Hume Company was held on the 7th of October, 1945, in the Hume plant.

(Testimony of Irwin C. Heagle.)

Mr. St. Sure: That is what the Board record discloses. I will so stipulate.

Mr. Tobriner: So stipulated

Trial Examiner Myers: Mr. Edises?

Mr. Edises: I am sorry, but I did not get that stipulation.

(The record was read.)

Mr. Edises: Yes, I so stipulate.

Trial Examiner Myers: What date was that?

Mr. Jennings: October 17th, Mr. Examiner.

Q. (By Mr. Jennings): Were there any representatives of the Teamsters in the plant on the day of the election?

A. There were not.

Q. Calling your attention to the month of November of 1945, Mr. Heagle, do you recall a conversation you had with Mr. Hume shortly after the middle of November, in which there was some discussion of a threatened boycott by the Teamsters?

A. Yes, I do.

Trial Examiner Myers: Which Mr. Hume was that?

The Witness: I beg pardon?

Trial Examiner Myers: Which Mr. Hume?

The Witness: Mr. R. G.

Q. (By Mr. Jennings): Do you remember approximately when that conversation took place?

A. I believe it was some time before the 20th of November.

Q. About how many days before the 20th?

A. Just a few days. I could not tell you exactly. Or, it could have been the day before.

(Testimony of Irwin C. Heagle.)

Q. Where did the conversation take place?

A. In the boiler room.

Q. Was that during working hours?

A. It was.

Q. Did Mr. Hume come and talk to you?

A. He did.

Q. Could you tell me what he said and what you said at that time?

A. I don't believe I can tell you the exact words, no.

Trial Examiner Myers: Tell us all that you remember.

The Witness: Well, the gist of the talk was the reason for my refusing to sign with the Teamsters Union, or my refusal to pay dues to the Teamsters Union, and also the threatened boycott or action that they would take in case we did not sign.

Q. (By Mr. Jennings): What did you say?

A. I still refused to sign. I told them that I would not sign.

Q. Had you, prior to that time, joined the FTA-CIO? A Yes, I had.

Q. About when was that?

A. I believe it was in October some time, when I signed the pledge card with the CIO.

Trial Examiner Myers: What year?

The Witness: I beg your pardon?

Trial Examiner Myers: What year?

The Witness: 1945.

Q. (By Mr. Jennings): Did you wear a CIO Union button?

(Testimony of Irwin C. Heagle.)

A. I know what you mean. I am just trying to think. I believe I did at that time. I am not sure.

Q. Did you make any statement to anyone publicly that you had joined, signed up?

A. Yes.

Q. Where did you make that statement?

A. Well, I believe I made the statement to Mr. Hume and to the members there, and—I think I know what you are referring to, but I just don't know how to answer that, because I think you misunderstood me on that statement. [86]

Q. Can you tell us just what you said?

A. Can I answer that this way?

Q. Yes, go ahead.

A. At a meeting called by the AFL, Mr. King asked me—that is, I had the floor, and I believe he accused me of being in the CIO, or something like that, or signing with the CIO, and I told him I had not yet. That is the statement I made. I had not yet.

Q. Thereafter you did?

A. I did after that, yes.

Q. And you say that you told Mr. Hume that you had signed up? A. I did.

Trial Examiner Myers: Which Mr. Hume?

The Witness: Mr. R. G. Hume.

Trial Examiner Myers: Every time you refer to Mr. Hume, you mean Mr. R. G. Hume?

The Witness: That is right.

(Testimony of Irwin C. Heagle.)

Mr. Jennings: I think it is true, Mr Examiner, that Mr. R. G. Hume is the only Mr. Hume that is active in the management of the Company. I would like to be corrected if that is not so.

Mr. St. Sure: That is correct, yes.

Trial Examiner Myers: All right. I just do not want to keep asking the same question. We have it cleared up now. [87]

Q. (By Mr. Jennings): I call your attention to the 20th of November, 1945. Was it Tuesday?

A. That is right.

Q. Do you recall that you went to work that day?

A. I did.

Q. About what time in the morning?

A. About 6:00 o'clock in the morning.

Q. After you came to work, did you see any group of individuals in front of the plant?

A. I did. I saw—well, we call them “pickets”, men bearing banners blocking the main gate of the plant, in front of the main gate to the plant.

Q. What pickets were they?

A. AFL.

Q. During the morning, did you have any discussion with Mr. R. G. Hume?

A. I did.

Q. At which other employees were present?

A. I did.

Q. Where did that discussion or meeting take place?

A. In front of the boiler room.

(Testimony of Irwin C. Heagle.)

Q. You are employed in the boiler room?

A. I am.

Q. Is the boiler accessible without going into the plant? A. Yes.

Q. Who attended this meeting in the boiler room, Mr. Heagle?

A. It wasn't in the boiler room. It was outside the boiler room.

Q. It was outside the boiler room?

A. Outside the boiler room.

Q. Who attended this meeting?

A. Mr. Hume and Mr. Birchall.

Q. What is his position?

A. I believe he is assistant to Mr. Hume.

Mr. Birchall: General Manager.

Trial Examiner Myers: Will you please spell it?

Mr. Birchall: Thomas D. Birchall, B-i-r-c-h-a-l-l.

Q. (By Mr. Jennings): What employees were present at the meeting?

A. You wish me to name them?

Q. No, just by group.

A. The warehouse group, and most of the front end crew, the regular workers.

Q. When you say the "front end crew", what do you mean by that?

A. I mean the cook room, canning department, cutting department, and receiving.

Q. All men employees? A. Yes.

Q. And regular employees? A. Yes. [89]

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: About how many were there at that time?

The Witness: Between 20 and 30, I believe.

Q. (By Mr. Jennings): What happened at that gathering?

A. Mr. Hume had a list in his hand. The AFL had demanded that we release—they would release the spinach, that is, deliver the spinach to the plant.

Trial Examiner Myers: What was that?

Would you read the answer?

(The answer was read.)

Trial Examiner Myers: What does that mean?

The Witness: I think you misunderstood me there. The list was—well, we should be fired or laid off before they would release the spinach to the plant.

Trial Examiner Myers: Who is “they”?

The Witness: The AFL.

Trial Examiner Myers: What do you mean “release”? You mean, deliver spinach?

The Witness: Well, they drove it away from the plant and took it down to one of the trucking contractors. I suppose there was danger of it being spoiled, and that was the only reason it would have been released, provided he laid all of us off.

Mr. Jennings: Will you mark that Board’s Exhibit 9 for identification, please?

(Thereupon the document above referred to was marked Board’s Exhibit No. 9 for identification.)

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: What did Mr. Hume say? Was that what you were going to bring out?

Mr. Jennings: I was going into that, Mr. Examiner.

Q. (By Mr. Jennings): I show you this letter, which is Board's Exhibit 9 for identification. Is that a copy of the letter which Mr. Hume had there?

A. No. Mr. Hume's was written in pencil, the list.

Trial Examiner Myers: Is that a copy? That is typewritten. Is that a copy?

The Witness: Why, the list that was handed to me was just a list of the names on a sheet of paper.

Trial Examiner Myers: Oh. All right.

Mr. Jennings: May it be stipulated, counsel, that Board's Exhibit 9 is a copy of a letter received by the Company?

Mr. St. Sure: That is correct, supplied to the Board by the Hume Company, at the Board's request.

Trial Examiner Myers: Do you so stipulate, Mr. Tobriner?

Mr. Tobriner: Upon the statement of Mr. St. Sure, yes. [91]

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes.

Trial Examiner Myers: Thank you.

Q. (By Mr. Jennings): Were the names listed on Board's Exhibit 9 the names that were on this list which Mr. Hume had?

A. There are a few there that I cannot place,

(Testimony of Irwin C. Heagle.)

and there is one that is misstated. That is Harley Cruikshank. There was no such man there. That was Freischneckt, was the man's name.

Mr. Jennings: I will offer Board's Exhibit 9 in evidence.

Trial Examiner Myers: Any objection, gentlemen?

Mr. St. Sure: No objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the letter is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit 9.

(The document heretofore marked Board's Exhibit No. 9 for identification was received in evidence.)

BOARD'S EXHIBIT No. 9

[Letterhead Cannery Workers' Union,
Local No. 22382]

November 20, 1945

G. W. Hume Company
South Front Street
Turlock, California

Attention Mr. Ray Hume

Dear Sir:

This is to notify you that the following, who are

(Testimony of Irwin C. Heagle.)

employees of your company, are suspended from membership in Federal Labor Union #22382:

H. F. Frazier	Fred White
Earnest Bishop	Carl P. Peterson
Harley Cruikshank	William J. Ely
J. Boyd McShane	Clyde Faddis
Nino Lombardo	Bob White
Arthur Berry	Clifford Luther
Peter Bjorklund	Neal Watts
Harold Dillard	G. J. Bobb
Harry Pierson	A. Thiessen
Archy Miller	William Wolfe
J. F. Breshears	George Wright
Verdeen Hartvickon	I. C. Heagle
Willis Thompkins	William Rogers
Ross Wilkinson	

We are requesting their dismissal of this date.

Very truly yours,

[Seal] /s/ H. C. TORREANO,
Representative.

HCT/d

Q. (By Mr. Jennings): Will you tell me what Mr. Hume said to the employees who were assembled there, Mr. Heagle?

A. He told us that he would have to lay us off temporarily, and then he mentioned—I believe there was a little said after that about “stick around.”

Q. Did he tell you why he had to lay you off?

A. Yes. For the very reason I stated a while back, so as to get the spinch released.

(Testimony of Irwin C. Heagle.)

Q. Released by whom?

A. By the Teamsters.

Q. Did you read the list of names to the employees while you were there? A. I did.

Q. Did you read the correct names of the employees as you understood it? A. I did.

Q. You mentioned that one of the employees was misnamed?

A. Yes. I think there were several of them that were misspelled on there, but I am not certain. That is, on that list.

Q. Could you indicate the names that were misspelled, Mr. Heagle? Tell us what the correct name was, as you read it.

A. Well, these names are all spelled right here, but on the list, I remember making the remark that some of them—the list was made up in hurry.

Q. Will you look at that and see?

A. Yes. This "J. Boyd McShane" should be McCamey. [93]

Q. Spell that. A. M-c-C-a-m-e-y.

Trial Examiner Myers: You say Harley Cruikshank should be Harley——

The Witness: Freischneckt.

A. (Continuing) I believe that is all.

Q. (By Mr. Jennings): Do you see Peter Bjorklund here? A. Yes.

Q. What is his correct name?

A. Oh, yes. The first name is Vidor, V-i-d-o-r. I do not just exactly remember what it is.

Q. Did you say anything at this gathering in front of the boiler room, Mr. Heagle?

A. Yes. I reminded Mr. Hume that he was lay-

(Testimony of Irwin C. Heagle.)

ing himself open to unfair labor practice charges.

Q. Did he make any answer to that?

A. Yes. He said he would have to take that chance.

Q. Was anything said about the spinach? Was there any discussion about getting the spinach?

A. Yes, there was. Several of the boys—we offered to go down and get the trucks, if he would give the word, and get the spinach, and I believe Mr. Birchall even agreed to drive one of the trucks at the time. But, we did not get it.

Trial Examiner Myers: When you said he would give the “word,” you mean Mr. Hume?

The Witness: That Mr. Hume would give the word, yes.

Trial Examiner Myers: What did he say to that?

The Witness: I received no answer.

Q. (By Mr. Jennings): Did you ask whether or not you were discharged?

A. Not at that time.

Q. Was there any discussion of discharge at that time, discharge slips?

A. All that was said at that time was that we were temporarily laid off.

Q. Were you given any discharge slip or anything to indicate the reason for your lay off?

A. No, we weren't.

Q. Did you ask for any?

A. I asked for one, yes.

Q. Whom did you ask?

A. Mr. Hume.

Q. What did you say?

(Testimony of Irwin C. Heagle.)

A. I asked him if he could give us a slip showing why we were laid off, and he said he could not.

Trial Examiner Myers: At this meeting that you had?

The Witness: Right there at that time, yes sir.

Q. (By Mr. Jennings): On Wednesday, November 21—strike that. [95] Did you leave the plant then, after this meeting? A. We did.

Q. On Wednesday, the 21st of November, did you come back to the plant? A. We did.

Q. At what time in the morning?

A. 8:00 o'clock.

Q. How many employes came back?

A. 46, approximately.

Q. Did you go into the plant or did you go across the street?

A. We gathered across the street, and then went into the plant.

Trial Examiner Myers: Were the pickets there that day, or as you call them, "pickets"?

The Witness: They were, yes sir.

Trial Examiner Myers: There were people there with signs that you call "pickets"?

The Witness: No, there was no signs out that morning.

Trial Examiner Myers: On the 20th, there were people there with signs?

The Witness: Yes, sir.

Trial Examiner Myers: On the 21st, there were just people there but no signs, is that it?

(Testimony of Irwin C. Heagle.)

The Witness: Representatives there from the AFL at that time, people that—well, out of town people, in other words.

Trial Examiner Myers: On the 21st?

The Witness: On the 21st, yes sir.

Trial Examiner Myers: About how many?

The Witness: I could not name the exact number. There was around nine or ten, I believe.

Q. (By Mr. Jennings): Were there women in this group of 46, or were they all men?

A. No, there were women in it.

Q. When you went to go through the gate, which group went first?

A. We had a few ex-service men, and the ex-service men and the women went first.

Q. Did anybody get through into the plant?

A. Yes, the women and these ex-service men got through.

Q. Did the regular workers get through?

A. We got as far as the inside door.

Q. What happened there?

A. There was a line thrown across. They linked elbows.

Q. Who linked elbows?

A. The AFL linked elbows and blocked the entrance.

Q. So you did not get in?

A. No. That is as far as we got.

Q. What did you do then? [97]

A. Called for Mr. Fordham.

Q. The Superintendent? A. Yes.

(Testimony of Irwin C. Heagle.)

Q. Who did you ask to get Mr. Fordham?

A. The watchman.

Q. Did he get him? A. He did.

Q. Did Mr. Fordham come out?

A. He did.

Q. Did you talk to Mr. Fordham?

A. I did.

Q. What did you say to him?

A. I told him we was reporting for work, and I believe my exact words were, "What is the verdict"? And he answered that we would have to clear ourselves with the AFL in order to be able to work, and I believe—I know I said—I said "Then that means pay dues and back dues"? And he says, "You haven't got no job," or "I guess you haven't got a job unless you do."

There was a lot of excitement there at the time. I don't just remember the words.

Trial Examiner Myers: What was the last part of that answer?

(The last part of the answer was read.)

Q. (By Mr. Jennings): About how many employees were there at the time this statement was made by Mr. Fordham?

A. Well, the original 46, and then several of the employees that were inside, quite a bunch of the employees that were inside were standing inside of the door.

Q. I will show you the appended page attached to the complaint in this proceeding, and ask you to look at the list of employees there, and tell me

(Testimony of Irwin C. Heagle.)

which of those employees, to your knowledge, were not present, and which were present.

A. This Archy Miller was not present at that time. He was laid up.

Q. You did not see him there?

A. No. Thomas Broll was not there at that time, either.

Trial Examiner Myers: What is that?

The Witness: Tom Broll. I do not remember seeing him.

Trial Examiner Myers: How do you spell that?

The Witness: B-r-o-l-l.

A. (Continuing) And I don't know Faddis well enough to know whether he was there or not.

Q. That is F-a-d-d-i-s? A. Yes.

Trial Examiner Myers: Were all the rest there?

The Witness: They were.

Q. (By Mr. Jennings): By the way, Mr. Heagle, do you know where Oscar Johnson is now?

A. In the service. [99]

Q. What branch of the service?

A. That I don't know.

Mr. Tobriner: Just a minute, Mr. Jennings. Is that a name on this Exhibit No. 9 that you are showing to him?

A. No, it is not on Exhibit 9.

Mr. Tobriner: You are showing him a list on the complaint?

Mr. Jennings: Attached to the complaint, yes.

Q. (By Mr. Jennings): Was Mr. Johnson a regular or a seasonal worker, Mr. Heagle?

(Testimony of Irwin C. Heagle.)

A. He was a warehouse worker, and I believe he would be classified as a regular, though without much seniority; a new man there, practically a new man there. He had not been there very long.

Q. Was Mr. Johnson present on November 28th at this meeting in front of the boiler room?

A. He was.

Q. To your knowledge, had Mr. Johnson joined the FTA-CIO?

A. Yes. That is, he signed—my knowledge is that he signed a pledge card, that is as far as my knowledge goes.

Q. Had he also refused to pay dues to the AFL?

A. He had.

Q. He was not named on this list of names that you read, was he?

A. Yes. Every man who worked in the warehouse was on that list. Not the supervisory employees. Every man outside of the supervisory employees was named.

Q. After you talked to Mr. Fordham in front of the plant, what did you do?

A. I beg your pardon, I was not in front. You mean, on the 21st?

Q. Yes.

A. That was in front of his office.

Q. In front of his office?

A. Inside the gate of the plant.

Q. What did you do then, after he had told you what you have testified about?

(Testimony of Irwin C. Heagle.)

A. We left and went home, that is, went across the street and gathered there for a while, but we left the plant.

Q. Were any company officials across the street when you went over there?

A. Yes, Mr. Hume and Tom.

Trial Examiner Myers: Tom who?

The Witness: Tom Birchall.

Q. (By Mr. Jennings): Did you hear any discussion about the matter of discharging the employees?

A. Yes, there was quite a bit of discussion going on, and Mr. Torreano of the Teamsters Union was there at the time, and Mr. Hume made the remark that Mr. Torreano had agreed to take all the responsibility.

Q. What did Mr. Torreano say?

A. Well, I believe he answered that he had, because he smiled all over his face.

Mr. Tobriner: Objection. Move it be stricken.

Trial Examiner Myers: Strike it out.

Did he say anything?

The Witness: There is nothing definite that I could say, no.

Trial Examiner Myers: Did he do anything?

The Witness: Yes. He laughed and shook his head when Mr. Hume made the remark.

Trial Examiner Myers: Which way did he shake his head, up and down or sideways?

The Witness: As though he meant, yes.

Q. (By Mr. Jennings): After that, did you leave? A. We did.

(Testimony of Irwin C. Heagle.)

Q. Were you thereafter re-employed by the company? A. On February 7, 1946.

Q. You received a letter offering you reinstatement? A. I did.

Q. Did you then go to work on February 7th?

A. I did.

Q. Have you been employed since? [102]

A. I was employed for 11 days, and then, due to the fact that there was no more work, I was off until the—I cannot remember the exact date. I would have to get that from Mr. Hume. Before spinach started.

Q. At any rate, you went back on your regular job, and you have been back on your regular job since that time? A. I have.

Q. Since February 7th?

A. With the exception of the time that I was off.

Q. So long as there was a job for you to do, you did it? A. That is correct.

Q. And nobody else was working on your job?

A. No.

Mr. St. Sure: I wonder, Mr. Trial Examiner—I am not inquiring because I am hungry, but I was wondering what your schedule would be? I have some telephone calls to make during the noon hour.

Trial Examiner Myers: Do you want to recess now for lunch?

Mr. St. Sure: I thought it might be helpful.

Trial Examiner Myers: Have you any objection, Mr. Jennings?

(Testimony of Irwin C. Heagle.)

Mr. Jennings: No, indeed. I was hoping somebody would ask. [103]

Trial Examiner Myers: We will adjourn now until 2:30. You are excused, Mr. Heagle, until 2:30.

(Witness excused.)

(Thereupon, a recess was taken until 2:30 o'clock p.m.)

After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 2:30 o'clock p.m.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Will you take the stand, please, Mr. Heagle?

IRWIN C. HEAGLE

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Resumed)

Trial Examiner Myers: Have you any further questions of Mr. Heagle?

Mr. Jennings: Yes, I have, Mr. Examiner.

Trial Examiner Myers: You may proceed.

Q. (By Mr. Jennings): Mr. Heagle, are you aware of the fact that the Company signed a con-

(Testimony of Irwin C. Heagle.)

tract with the Teamsters on or about March 25th?

Mr. Tobriner: The contract speaks for itself, Mr. Jennings. Do not characterize it, please. It is with the Teamsters.

Q. (By Mr. Jennings): I will show you Board's Exhibit 8——

Mr. Tobriner: I am going to ask, Mr. Trial Examiner—the contract will speak for itself. Mr. Jennings has characterized this contract in language that is completely misleading, I think.

Trial Examiner Myers: Reframe the question.

Q. (By Mr. Jennings): Were you aware of the fact that the company had signed a contract with the labor organizations who are named on Board's Exhibit 8? A. I was.

Q. Was any notice posted in the plant advising the employees that such a contract had been signed?

A. Not to my knowledge.

Q. Have you ever seen such a notice?

A. I have not.

Q. Since March 25th of 1946, have you been approached to join the AFL union named in that contract? A. I have.

Q. About when was that? A. Last week.

Q. By whom were you approached?

A. Mr. Evanson.

Q. Do you know his full name?

A. E-v-a-n-s-o-n. I cannot think of it right off.

Q. What labor organization does he represent?

A. Represents the AFL.

Q. Where did he talk to you?

A. In the boiler room. [106]

(Testimony of Irwin C. Heagle.)

Q. Were you working? A. I was.

Q. What did he say to you?

A. He asked me if I already signed the slip, and I told him no.

Q. What did he ask you to sign?

A. A clearance slip.

Q. Did you sign it? A. I did not.

Q. Mr. Heagle, during this year, the year of 1946, have representatives of the AFL or of the Teamsters union been given access to the company's plant in Turlock? A. They have.

Q. Have you seen them in the plant?

A. I have.

Q. Talking to the employees during working hours? A. I have, yes, sir.

Q. Has that been true since March 1st of 1946?

A. It has.

Q. Have representatives of any other labor organization been in the plant talking to the employees? A. They have not.

Mr. Jennings: Would it be possible, counsel, to stipulate so as to avoid repetition of the question, that representatives of the charging union, the FTA-CIO have been denied access to the company's plant?

Mr. St. Sure: I do not know that that is the fact. As soon as Mr. Hume or Mr. Birchall return, I will be very glad to stipulate with you, but I do not know what the situation has been from the period March 1st to March 15th. Prior to March 1st, and I assume since the 25th of March of this

(Testimony of Irwin C. Heagle.)

year, the AFL representatives have been admitted to the plant. In the interval between those dates, I am not sure.

Mr. Jennings: I am thinking now about the denial of access to the charging union, Mr. St. Sure.

Mr. St. Sure: I can stipulate that the charging union has not had admission to the plant. I would like, however, to consult Mr. Hume and Mr. Birchall to be sure I am correct. I say I stipulate that, because I assume that during the period the contract was operative, the AFL had the only right of access as the representative of the workers under the contract. Since this March 25th document was signed, I assume the same situation was viewed as correct by the plant. The reason I mention the period from March 1st to 25th is because during that period we had asked the members of the C. P. & G. to bar the representatives of both unions from the plant. I think that probably would add up to the lack of access by the FTA-CIO, but I am not sure enough of it to want to stipulate without checking.

Q. (By Mr. Jennings): From March 1st to March 25th, Mr. Heagle, were you employed?

A. I was. [108]

Q. In the Turlock plant. During all of that time, or just during part of it?

A. I cannot tell you exactly. I do not remember just exactly when I was called back to work this last time. I was called back just about a week or so after they started spinach, and I do not remem-

(Testimony of Irwin C. Heagle.)

ber the exact date. I could find it out by my time cards, but I do not have any idea when it was.

Q. Were you working on the 25th of March, when this contract, Board's Exhibit 8, was signed?

A. Yes.

Q. Had you been working prior to that?

A. Yes, a few days.

Q. For about how long? A. A few days.

Q. Do you know whether or not representatives of the AFL or of the Teamsters were in the plant during those days? A. Yes, they were.

Mr. Jennings: I have nothing further.

Trial Examiner Myers: Have you any questions, Mr. St. Sure.

Mr. St. Sure: I have simply one question.

Cross-Examination

By Mr. St. Sure:

Q. Mr. Heagle, at the time that the court action was filed that you referred to as resulting in an injunction for a period of some days last August, you were President of an organization known as the "Cannery & Food Process Workers Union of the Modesto Area," is that correct?

A. Acting as President.

Q. Acting President? A. Temporarily.

Q. That organization in turn was chartered by the Cannery & Food Process Workers Council of the Pacific Coast? A. That's right.

Q. Was the local union that you were Acting President of, or the Food Process Workers Council,

(Testimony of Irwin C. Heagle.)

or either of them, affiliated with either the AFL or the CIO? A. At that time, no.

Q. Was the Food Process Workers Council of the Pacific Coast a subsidiary of or an auxiliary of the Seafarers' Union, the International Seafarers' Union of the AFL?

A. It was for a short time, but I would rather that somebody who knows more about that than I do answer that, because I wasn't—

Q. There was some confusion at that time as to whether you were part of the AFL, and you subsequently went independent, I believe?

A. That's right.

Q. But at that time you were not a member of, nor was that Union nor was that Council affiliated with the CIO? A. It was not. [110]

Mr. St. Sure: I have no other questions.

Trial Examiner Myers: Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Heagle, you have been a member of Local 22382 I think for some time? A. I have.

Q. How many years?

A. I believe I joined in 1939.

Q. You were an active member of the union, were you not? A. From 1943 on, yes.

Q. You were a member of the Executive Committee of 22382, were you not?

A. Since the latter part of 1943.

Q. You participated in discussions with the Executive Committee, did you not?

A. I did at that time.

(Testimony of Irwin C. Heagle.)

Q. You knew, did you not, that 22382 took the position, at least in the meetings of the Executive Committee, that the contract which was called the "Green Book Contract" was a union ship contract?

A. Not necessarily.

Q. You deny that you took that position?

A. I took the position—I believe it is called "preferential hiring." [111]

Q. Do you say they did not take the position that a person should be discharged under that contract if he did not pay dues to 22382?

A. Well, naturally we figured that should be that way.

Q. Sure. In other words, you did take the position that the person who did not pay dues to 22382 should be discharged?

A. We may have taken that position, but I do not believe it was ever enforced, to my knowledge.

Q. Aside from whether it was enforced——

Trial Examiner Myers: What do you mean by "take the position?"

Q. (By Mr. Tobriner): Didn't the Local tell the employers that it believed that a person who did not pay dues to 22382 should be discharged?

A. You will have to ask that of somebody else. I never said it myself, and never heard it in that many words.

Q. Didn't you know that there were discharges of people who did not pay dues under the Green Book Contract? A. Not to my knowledge.

(Testimony of Irwin C. Heagle.)

Q. Didn't you know that in Oakdale, in the spring of '44, there were discharges of persons who did not pay dues?

A. I never heard of the Oakdale plant.

Q. You never heard of anybody being discharged for non-payment of dues?

A. I heard of people being discharged for non-payment of dues to the Teamsters since they came in.

Q. No, prior to the summer of 1945.

A. That I wouldn't be prepared to argue.

Q. I am not asking you to argue. We have lawyers for that. I am asking you whether you do not know of your own knowledge that there were people discharged.

A. Not to my knowledge.

Q. You never heard that?

Mr. Edises: Just a moment. I object to that as already asked and answered several times.

Mr. Tobriner: No. He answered it once the other way.

Trial Examiner Myers: Overruled.

Will the reporter please read the question?

(The question was read.)

A. In connection with the Oakdale plant, no, I never have.

Q. In connection with any plant.

A. As far as any plant down there, the Hume plant is all I am interested in.

Q. I am asking you, any plant?

Mr. Jennings: Object to counsel asking about any plant except the Hume plant.

(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Let me ask you——

Mr. Jennings: I do not object upon the ground it is irrelevant, because obviously this witness does not know what happened at any other plant. [113]

Trial Examiner Myers: That is right.

Q. (By Mr. Tobriner): You were a member of the Executive Council, Mr. Heagle?

A. I was.

Q. Didn't the Executive Council pass an action of the union with regard to other plants besides Hume? A. They did.

Q. So you know of certain things regarding other plants?

A. I wasn't present at all the executive meetings.

Q. I am going to ask you whether at any meeting of the Executive Council, the matter ever came up as to what should be done with people who did not pay dues at any other plant? Did that ever come up?

A. I do not remember.

Trial Examiner Myers: While you were present.

The Witness: I do not remember, myself.

Q. (By Mr. Tobriner): Do you remember the case of Wes King?

A. I remember Wes King.

Q. Do you know anything about his being let out because of non-payment of dues?

A. I didn't understand that was the reason he was let out.

Q. So you don't know of any case where that was done?

(Testimony of Irwin C. Heagle.)

A. Not to my knowledge, not definitely, because if the case was something I was interested in, I might remember it. But, I don't remember of any case. [114]

Q. You are not prepared to go as far as to say it would not have happened?

Mr. Edises: Now, Mr. Examiner——

Mr. Tobriner: I am cross-examining, Mr. Edises.

Trial Examiner Myers: Let Mr. Edises state his objection first.

Mr. Edises: I will object to this repeated asking of the same question over and over again.

Mr. Tobriner: The witness has varied his answers, Mr. Trial Examiner. I want to get the truth, if I can.

Trial Examiner Myers: Suppose that he said it might never have happened, as you want him to say. What probative value would it have?

Mr. Tobriner: He has made the statement that——

Trial Examiner Myers: He says he does not remember.

Mr. Tobriner: But on his direct examination he took the position that the union did not contend that they had a union shop contract which required the discharge of persons who did pay dues. I am now demonstrating, if I can, that that is not the accurate statement.

Trial Examiner Myers: He says he does not remember.

Mr. Tobriner: He does not remember. Well, let it go at that.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Tobriner): You mentioned that Mr. Torreano and Mr. Brown visited the Hume plant in the spring of 1945. You said on your direct examination that they said you should affiliate with the Teamsters, isn't that right? A. Yes.

Q. You never did affiliate with the Teamsters?

A. No, never did.

Q. Did you continue your membership in 22382? A. Not after that time.

Q. You did not? A. I did not.

Q. You dropped your membership in 22382 after the spring of 1945?

A. After June of 1945.

Q. As a matter of fact, did Mr. Torreano tell you or ask you to go into the Teamsters, or did he ask you to continue your membership in 22382?

A. As an affiliate of the Teamsters.

Q. Please answer the question.

A. He asked us to go in. In other words—well, at that time when they first come down there, they did not admit it was 22382. They said it was the Teamsters direct, that it was ordered by Mr. Green back in Washington, to affiliate with the Teamsters.

Q. They mentioned that you should go into some other organization of the Teamsters, is that it?

A. No. They mentioned that we should affiliate with the Teamsters.

Q. Did they ask you to take your membership out of 22382 and go into a new organization?

A. No.

(Testimony of Irwin C. Heagle.)

Q. What did they ask you?

A. Asked us to affiliate with the Teamsters.

Q. The whole 22382, as a whole?

A. I expect so, yes.

Q. Was there a meeting called for that purpose?

A. A meeting in our plant.

Q. To take a vote on that?

A. No, they told us we was not entitled to a vote. We asked for a vote, and they told us we were not entitled to it.

Q. They asked you to affiliate, although no vote was taken? A. That is right.

Q. What do you mean by "affiliate?"

A. Well, the way I understood affiliation, pay per capita tax to the Teamsters International.

Q. But there was no local they mentioned, of the Teamsters? A. No. You mean——

Q. Local.

A. Well, at that time, no, I don't think so.

Q. So your position is that Mr. Torreano and Mr. Brown came out there and asked you to pay a per capita tax direct to the International Brotherhood of Teamsters, there not being a local made up of the Teamsters? [117]

Trial Examiner Myers: No, he did not testify that.

Mr. Tobriner: Let me put it this way:

Q. (By Mr. Tobriner): Your position is, then, that they asked you to pay per capita tax?

Trial Examiner Myers: He did not say. You asked him what he meant by "affiliation," and he

(Testimony of Irwin C. Heagle.)

explained it to you. He did not say that either one of those two gentlemen told him to pay per capita tax.

Mr. Tobriner: Let me get that clear.

Q. (By Mr. Tobriner): Are you discussing now the time that Mr. Torreano and Mr. Brown came out there? A. That's right.

Q. You are telling me now what they asked you to do?

A. No. I did not tell you that they asked us to pay per capita tax. I said I understood the definition of the word "affiliate" was to affiliate so as to pay per capita tax.

Q. But they said the word "affiliate" with the International Brotherhood of Teamsters?

A. That is right.

Q. And you understood that that was to pay per capita tax to the International Brotherhood of Teamsters?

A. That has always been my understanding.

Q. Did they say, or did you understand that 22382 was not to continue? [118]

A. At that time, yes.

Mr. Edises: Just a moment. I want to object to the question, and ask that the answer be stricken on the ground that it is compound.

Mr. Tobriner: Let us split it up.

Trial Examiner Myers: Do you withdraw your question?

Mr. Tobriner: I withdraw the question.

Trial Examiner Myers: Strike out the answer, then.

(Testimony of Irwin C. Heagle.)

Q. (By Mr. Tobriner): Did they say that 22382 was not to continue?

A. I do not believe there was anything mentioned of any kind, whether it was to continue or not to continue at that time.

Q. You signed a clearance slip around that time, I think you testified?

A. It was after that.

Q. After that time? A. Yes.

Q. When was that, approximately?

A. Well, as I said before, just before the start of the peach season.

Q. With what union was that clearance slip signed?

A. That clearance slip said "22382."

Mr. Tobriner: Have we a copy of that clearance slip?

Mr. Jennings: I think I have a couple here.

Mr. Tobriner: May I have them?

(Mr. Jennings hands slip to counsel.)

Q. (By Mr. Tobriner): I show you a yellow piece of paper entitled "Clearance Card," and ask you to look at it, please.

A. That is one of their clearances.

Q. That is one of them? A. Yes.

Mr. Tobriner: Thank you.

I am going to ask that this be introduced into the record as AFL Exhibit No. 1.

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit 1.

Of course, you do not want any of the handwriting in?

Mr. Tobriner: No, just the form, Mr. Trial Examiner.

(The document referred to was marked AFL Exhibit No. 1 and was received in evidence.)

Q. (By Mr. Tobriner): Were your dues then deducted in favor of the union named on the yellow slip? A. They were not.

Q. They were not deducted? A. No.

Q. But you signed the clearance slip? [120]

A. I signed the clearance slip.

Q. Did you pay dues to 22382?

A. I did not.

Trial Examiner Myers: You mean, after that date?

Mr. Tobriner: After that date.

The Witness: I did not.

Q. (By Mr. Tobriner): Did you receive any notice to appear before the Executive Board of 22382? A. I did not.

Q. I show you a carbon copy of a letter dated December 8, 1945, and addressed to Irwin C. Heagle, 617 East Olive Street, bearing the typed signature of "H. C. Torreano, Representative," and I ask you to look at that letter and see if it refreshes your recollection?

(Testimony of Irwin C. Heagle.)

A. I do not remember of getting a letter of that kind.

Q. You do not? A. I do not.

Q. This is your address, is it not, 617 East Olive, Turlock, California? A. That's right.

Q. Do you have any recollection of not getting any such letter?

A. I never received such a letter, to my recollection.

Q. You knew, did you not, that the contract that was signed between the canners and the AFL was signed in the name of 22382?

Trial Examiner Myers: What contract?

The Witness: What contract?

Mr. Tobriner: The green contract.

Mr. St. Sure: I think, Mr. Trial Examiner, for the record perhaps it would help if I would outline the procedure of the manner in which the Green Book Contract or the so-called "Master Contract" was signed and annually ratified.

Trial Examiner Myers: Can you do it in the form of a stipulation?

Mr. St. Sure: The contract itself was signed by officials of the C. P. & G. and by representatives of the American Federation of Labor, and then each member plant and each local union signed the certificate adopting the contract to apply to the individual plants, so the Master Contract itself does not show the listing of the individual locals or the individual plants, but the acceptances that I have outlined and the form that I have indicated was separately executed each year.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Can we accept that statement?

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Do you stipulate?

Mr. Jennings: So stipulated, Mr. Examiner.

Trial Examiner Myers: Do you so stipulate, Mr. Edises?

Mr. Edises: I believe the statement is correct. I will so stipulate.

Mr. Jennings: I might point out that the forms that were signed by the individual local and the individual company appear on pages 39 and 40 of the Green Book Contract.

Mr. St. Sure: That is the form in blank that appears in the contract.

Mr. Jennings: I ask that that be made a part of the stipulation.

Trial Examiner Myers: Very well.

Do you so stipulate?

Mr. Edises: So stipulate.

Mr. St. Sure: For the employers, so stipulate.

Trial Examiner Myers: Do you?

Mr. Tobriner: I so stipulate.

Trial Examiner Myers: Do you, Mr. Jennings?

Mr. Jennings: Yes.

Q. (By Mr. Tobriner): Did you know this contract had been signed by 22382 in the manner we have stipulated?

A. I was not a member of the Executive Board at the time that contract was signed. I understood to that effect, but I don't know.

(Testimony of Irwin C. Heagle.)

Q. Did you know the dues collection and check-off dated August 21, 1944, was signed by Cannery Workers Union, 22382, by R. M. Tomson?

A. Yes.

Q. Did you know that—strike that.

Did you, however, tell the employees at the Hume plant that they did not have to pay dues to 22382?

A. I did, yes. [123]

Q. You did not pay dues yourself?

A. I did not.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any further questions?

Redirect Examination

By Mr. Jennings:

Q. Mr. Heagle, were you ever expelled from membership in Local 22382?

A. I never received official notice to that effect.

Q. You say that you never received official notice? A. That is right.

Q. Were you ever told unofficially by a representative of Local 22382 that you had been expelled?

A. I believe Mr. Brown made that remark at one time at the plant.

Q. Approximately when was that?

A. It was some time after June. I don't know just exactly when it was.

Q. Was that before or after you signed the clearance in August of 1945?

(Testimony of Irwin C. Heagle.)

A. I would not be prepared to say just exactly when that was.

Q. Did you ever receive any official notice after that to the effect that you had been expelled?

A. No, I did not. [124]

Q. When Mr. Evans approached you last week, what did he ask you to sign? Did he ask you to sign an application for membership?

A. He asked me to sign a clearance slip.

Q. Just a clearance? A. That was all.

Q. In the form of AFL Exhibit No. 1?

A. That's right.

Trial Examiner Myers: Are there any further questions?

Recross-Examination

By Mr. Tobriner:

Q. Mr. Heagle, you were, as you said, a member of the Executive Council, and I presume as such you were familiar with the constitution and by-laws of Cannery Workers Union Local 22382?

A. Yes, sir.

Q. Do you recognize that book? (Exhibiting book to witness.) A. Yes, sir.

Q. They are the by-laws of 22382?

A. That is right.

Q. You are familiar with the provisions of the by-laws, particularly with reference to Article XI, "Initiation Fees, Dues and Arrearages?"

A. Very familiar, yes, sir.

(Testimony of Irwin C. Heagle.)

Q. Did you know that Section 1 of Article XI reads:

“... Any member failing to pay dues on or before the 15th day of each month will be fined 50 cents. If the dues are not paid by the 1st of the following month they shall not be allowed to continue working.”

A. Yes, sir.

Mr. Tobriner: May I offer this as Exhibit 2?

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

Trial Examiner Myers: There being no objection, the booklet is received in evidence, and I will ask the reporter to please mark it AFL Exhibit No. 2.

(The document referred to was marked AFL Exhibit No. 2 and was received in evidence.)

Q. (By Mr. Tobriner): You mentioned in your direct examination that Mr. Torreano was the representative of the Teamsters, did you not?

A. I did.

Q. Did you not know that Mr. Torreano was a representative of 22382?

A. That is what Mr. Torreano claimed later on.

Q. He said that, did he? A. Later on, yes.

Q. When you say “later on,” what do you mean?

A. After the first meeting and the second meeting, he claimed he was a representative of 22382.

Q. Which meetings do you refer to now? [126]

(Testimony of Irwin C. Heagle.)

A. The meeting in—I believe it was before the start of the peach season, around the first of August somewhere.

Q. The other season you mentioned prior to that time was in the spring of '45?

A. June of '45.

Q. At that time wasn't Mr. Flanigan Supervisor of 22382? A. He was.

Q. Did Mr. Torreano say he was working under Mr. Flanigan's direction?

A. I did not ask him.

Q. You did not ask him? A. No.

Q. Did he say that?

A. I don't remember whether he did or not. There was so many of them down there at that time, that it is hard to distinguish them.

Q. You don't remember whether he said it or not? A. Not definitely, no.

Q. Do you remember his saying that he was a representative of the International Brotherhood of Teamsters?

A. I do not believe he said so in so many words, but he did say that we were compelled to affiliate with the International Brotherhood of Teamsters.

Q. Aside from that, did he ever say he represented them?

A. I don't believe he did, not as far as I can remember.

Q. There was a meeting in August of '45 at which you said there were representatives of Teamsters present. Could you name who those people were?

(Testimony of Irwin C. Heagle.)

A. Inferring that, they spoke at that time, they naturally inferred that they were representatives of the Teamsters.

Q. Who else was there besides Mr. Torreano?

A. Brown.

Q. Hadn't Mr. Brown been an officer of 22382 prior to this time?

A. He had been, but he had been suspended.

Q. Yes, some time back. Did Brown say he was a representative of the Teamsters?

A. At that time, no.

Q. Was there a third person there, if you remember? Mr. deChristofaro. Would that refresh your recollection?

A. I don't remember whether deChristofaro was there that day or not. I believe he came at a later date.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any further questions, gentlemen?

Mr. Jennings: Just one, so as not to leave the record unclear.

Redirect Examination

By Mr. Jennings:

Q. Why was Brown suspended from Local 22382?

A. I believe the charge was conduct—something against the [128] best interests of the union, of the local.

Q. What exactly had he done?

Mr. Tobriner: Object to what he had done.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Overruled.

A. I believe he started to work for the so-called "Teamsters" in signing another plant where he was sent to sign the plant for our Local, signing for the Teamsters.

Q. Instead of 22382?

A. Instead of for 22382.

Q. Do you know, Mr. Heagle, whether Local 22382 had received any instructions from President Green of the American Federation of Labor to affiliate with the Teamsters Union? A. Yes.

Mr. Tobriner: Objected to. I move that it be stricken on the ground that instead of asking this witness whether he knew, the best evidence would be the instructions of the AFL to 22382, if that is what you want to get at.

Trial Examiner Myers: Overruled.

Q. (By Mr. Jennings): When did you receive these instructions?

A. I could not tell you exactly. I don't—

Q. What month, about?

A. I don't know exactly. Some time in the early spring of 1945, I believe.

Mr. Jennings: That is close enough.

Trial Examiner Myers: Before this June meeting or after the June meeting?

The Witness: That I would not be prepared to say. I could not just remember whether it was before or after.

(Testimony of Irwin C. Heagle.)

Q. (By Mr. Jennings): Did the local ever affiliate with the Teamsters, to your knowledge, while you were a member of it?

A. Not while I was a member, no.

Q. While you were active in it? A. No.

Mr. Jennings: That is all.

Recross-Examination

By Mr. Tobriner:

Q. Mr. Heagle, you mentioned that Mr. Brown was suspended by the Union. Is it not a fact that Mr. Brown was thereupon discharged from his job at the cannery where he was working?

A. I believe I heard something to that effect at a later date, yes.

Mr. Tobringer: Thank you.

The Witness: I am not certain.

Trial Examiner Myers: You are excused, Mr. Heagle. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, Mr. Jennings? [130]

Mr. Jennings: Mr. Tomson, please.

R. M. TOMSON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, Mr. Tomson?

(Testimony of R. M. Tomson.)

The Witness: R. M. Tomson, T-o-m-s-o-n.

Trial Examiner Myers: Where do you live, sir?

The Witness: 511 Waverly Drive.

Trial Examiner Myers: Modesto?

The Witness: Modesto, yes.

Trial Examiner Myers: You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): By whom are you employed, Mr. Tomson?

A. I am a Labor Relations Advisor for various canneries, representing Management.

Q. Did you ever hold any office in Local 22382.

A. I did.

Q. What office?

A. I was Secretary-Treasurer and Business Manager.

Q. For how long?

A. Since July, 1942 to about June, 1945.

Q. Did you ever hold any office in the California State Council of Cannery Unions?

A. I was President of the California State Council.

Q. At what time?

A. About February, 1944 to June, 1945.

Q. Were you a member of the Adjustment Board provided for in the contract between the C. P. & G. and the California State Council of Cannery Unions?

A. Yes, I was.

Q. You say that you ceased to be President of the California State Council in June of 1945?

A. May or June. I do not remember the month.

(Testimony of R. M. Tomson.)

Q. Can you explain to us what happened at that time, Mr. Tomson?

A. The Local Union, of which I was Secretary-Treasurer, was ordered to affiliate with the International Brotherhood of Teamsters, and the membership took a vote and voted against affiliation, and we did not affiliate, so I did not go with them, either, so I was expelled as Secretary-Treasurer of the Local and I just quit as President of the State Council.

Mr. Tobriner: I think the testimony is full of conclusions and opinions, but for the purpose of the record, I move it be stricken.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Jennings): That was Local 22382 that you refer to, was it?

A. Yes, that was the Federal Labor Union.

Q. Chartered directly by the American Federation of Labor? A. Yes.

Q. Can you tell us very briefly what happened, first of all to the employees? Did they join some other union than Local 22382?

Mr. Tobriner: Object to the form of the question. I do not want these blanket questions to go in, and then a blanket answer.

Trial Examiner Myers: I will sustain the objection.

Mr. Jennings: All right.

Q. (By Mr. Jennings): With what organization did you affiliate after you ceased your affiliation with Local 22382?

(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to. I do not understand the question. You mean, was Mr. Tomson personally affiliated?

Mr. Jennings: That is right.

Mr. Tobriner: What did he personally do?

Mr. Jennings: That is right.

Mr. Tobriner: If it has any bearing on this case, it is admissible, but I object as to materiality.

Trial Examiner Myers: Are you going to connect it up?

Mr. Jennings: Yes. Part of it is background, Mr. Examiner.

Mr. Tobriner: This is limited to Mr. Tomson's personal experience.

Trial Examiner Myers: Through that organization you got [133] an injunction, is that the point?

Mr. Jennings: That is right.

Trial Examiner Myers: I will overrule the objection. What is the question?

The Witness: I will have to have the question again.

(The question was read.)

A. Well, we were affiliated.

Mr. Tobriner: Pardon me?

Trial Examiner Myers: You yourself? Did you join any other labor organization?

The Witness: The Seafarers' International Union.

Trial Examiner Myers: Affiliated with the American Federation of Labor?

The Witness: Yes.

(Testimony of R. M. Tomson.)

Q. (By Mr. Jennings): How long a period of time were you in the Seafarers?

Mr. Tobriner: Objected to on the ground of immateriality.

Q. (Continuing): Approximately?

A. Approximately two months.

Q. Then——

Trial Examiner Myers: When did you join the Seafarers?

The Witness: About in May, 1945.

Trial Examiner Myers: You got out when?

The Witness: About July sometime.

Trial Examiner Myers: After the issuance of the [134] restraining order, or before?

The Witness: I don't know about this restraining order. This was after I left.

Mr. Tobriner: I move that all be stricken, Mr. Trial Examiner. It has no relationship to anything in this case. It is utterly immaterial and fails to link up.

Q. (By Mr. Jennings): You ceased your affiliation with the Seafarers, I think you said in July of 1945?

A. Yes. I resigned as President of the Pacific Coast Council that was affiliated with the Seafarers International Union.

Q. Then did you join some other labor organization after you left the Seafarers? A. No.

Q. Do you know whether or not the employees who were in the Seafarers Union with you affiliated with some other labor organization? A. Yes.

(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to on the ground that is a wild conclusion.

Trial Examiner Myers: What do you mean by "employees"? Employees of the Seafarers Union or the employees of some canneries?

Mr. Jennings: The employees of the canneries in the Modesto area who were members of Local 22382.

Trial Examiner Myers: There is no evidence that any [135] employees of canneries were members of it.

Mr. Edises: I think it ought to be brought out on the record.

Trial Examiner Myers: What is this all about, anyway?

Mr. Jennings: Merely to explain what appears to be an uncertainty in the record, Mr. Examiner. The fact of the matter is that there was an Independent bearing the name which Mr. St. Sure has stated in the record.

Mr. Tobriner: So stipulated, there was an Independent Union called "Cannery & Food Process Workers Union". We can stipulate that.

Mr. Jennings: And Mr. Heagle was active in that organization at one time.

Trial Examiner Myers: All right. Do we need to go into that?

Mr. Jennings: We do not need to go into that, if Counsel will stipulate to that.

Mr. St. Sure: We spent about three weeks getting it into a record which is before the Board as a

(Testimony of R. M. Tomson.)

part of the representation hearing. I do not know what that has to do with this. We went all through it for days and days.

Mr. Tobriner: I might suggest, Mr. Jennings, that if the Trial Examiner wants the whole case to go in, I have no objection.

Mr. Jennings: The whole representation case, you mean? [136]

Mr. Tobriner: We have no objection to the "R" case.

Mr. St. Sure: I have no objection to it, but it will make a nice, bulky document to carry back across the country.

Trial Examiner Myers: You just want a stipulation about what? What is the stipulation that you want?

Mr. Jennings: That there was an organization known as the "Cannery & Food Process Workers".

Mr. St. Sure: Don't look at me, Mr. Jennings! I don't know anything about it, whether it is alive, dead, Seafarers or Teamsters, or what it is. Don't ask me to stipulate to that one.

Mr. Tobriner: It is not necessary to stipulate, Mr. Jennings. It was stipulated in the Supplemental Decision and Decision Ordering the Election. It is in the record, and it is stipulated, so what is the good of putting material in on that?

Mr. Jennings: All right. I am inclined to agree with Mr. St. Sure that the status of that organization is somewhat difficult to explain at this time.

Mr. St. Sure: That is an understatement.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: I will ask you to proceed with this witness.

Q. (By Mr. Jennings): Mr. Tomson, during the period of time that you held office in Local 22382 and in the California State Council of Cannery Unions, and were a member of the Adjustment [137] Board and set up by the contract, the Master Contract, was there ever at any time a discussion of whether or not the contract required the discharge of employees who failed to maintain membership in the contracting union?

Mr. Tobriner: Will you read that question, please?

(The question was read.)

Mr. St. Sure: May we inquire whether we are going to be a party to this answer?

Trial Examiner Myers: If he says, "No", then that is the end of it. If he says, "Yes", then I will ask him to lay a foundation.

A. It was discussed on many occasions, yes.

Mr. St. Sure: I did not mean in that connection, Mr. Trial Examiner. I meant that I assumed the unions may have discussed it. It may have been discussed at the union meetings, and at the time was tentatively tied into the Adjustment Board. I did not think the question did so.

Mr. Jennings: I intended it that way, Mr. Examiner.

Q. (By Mr. Jennings): Mr. Tomson, was that matter discussed with representatives of the C. P. & G., particularly with Mr. St. Sure or representatives of the C. P. & G.?

(Testimony of R. M. Tomson.)

A. The question had come up on numerous occasions, by this local and by other locals. It came up officially before the Adjustment Board. It came up during negotiations. Mr. St. Sure had informed the unions at that time of the position of [138] the canners in regard to the effect of the preferential hiring clause in the agreement, and there have been cases before the Adjustment Board, and the Adjustment Board officially has ruled that it was not a closed shop contract, but rather a preferential hiring clause, and the covering is taken care of in the collective bargaining agreement.

Mr. St. Sure: May I interrupt before we get any further into the conclusions of Mr. Tomson? I submit that the answer is not responsive to the question. It goes far beyond the question.

Since Mr. Tomson has seen fit to refer to the official records of the Adjustment Board, I prefer that they be produced, because my recollection vastly differs from Mr. Tomson's. I prefer not to cross-examine on heresay, and I ask that the answer be stricken.

Trial Examiner Myers: Strike out the answer and read the question to the witness, please.

(The question was read.)

Trial Examiner Myers: Yes or No?

A. Yes.

Q. On how many different occasions was the matter discussed?

(Testimony of R. M. Tomson.)

A. On numerous occasions. It was discussed not only there but during the contract negotiations every year, it was discussed.

Trial Examiner Myers: That is enough, now.

Q. (By Mr. Jennings): Did the C. P. & G. inform the Union of its position at the time of the discussions?

Mr. Tobriner: Objected to on the ground that any information would be in writing. I demand the written documents.

Trial Examiner Myers: Wait. Suppose he says, "No"? What is the use of asking?

Mr. Tobriner: I object, because this witness, when he starts in, he just turns it on.

Mr. Edises: I will ask the counsel be admonished not to speak in that manner of a witness who has a right to the protection of this body.

Mr. Tobriner: The witness can take care of himself, Mr. Edises.

Mr. Edises: Just keep these cracks out of it, then.

Trial Examiner Myers: Just answer Yes or No, Mr. Tomson.

A. Yes.

Mr. Tobriner: I object.

Q. (By Mr. Jennings): You heard Mr. St. Sure state his position this morning, did you, Mr. Tomson?

A. That has always been his position, if I am referring to what you say, and I think that you read

(Testimony of R. M. Tomson.)

a letter there, or something, where he explained about the preferential hiring. Isn't that what you are talking about?

Q. That is right.[140]

A. It has always been his position that they could not fire employees for not being paid up in the union.

Mr. St. Sure: I do not mind Mr. Tomson agreeing with me, if he wants to agree with what I said, period; that is all right. But, to characterize what I said and interpret it, I do not propose to permit.

Trial Examiner Myers: Strike out the answer and read the question to the witness. It calls for a Yes or No answer.

(The question was read.)

Trial Examiner Myers: Yes or No.

A. I cannot answer that Yes or No, because I don't know what position he is talking about. If he reads his position—I heard everything that took place here this morning. What he is referring to, I don't know.

Q. That is the question I asked you. You heard Mr. St. Sure state the position which he is now maintaining with regard to the contract?

A. I heard what Mr. St. Sure said this morning, yes.

Q. Was the position which the C. P. & G. took on these past occasions substantially the same as that taken by Mr. St. Sure this morning? Answer Yes or No.

Mr. Tobriner: If the answer is Yes or No, I will not object.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: That is all it is going to be, Yes or No. [141]

Mr. Tobriner: But I want to make one objection. It calls for a conclusion of the witness when he say "substantially the same". After all, what one witness may think is substantially the same as the position of Mr. St. Sure, another witness may think is not substantially the same, so it seems to me the witness is being called upon to use discretion and opinion.

Trial Examiner Myers: What do you want to eliminate, the word "substantial"?

Mr. Tobriner: Yes.

Trial Examiner Myers: Strike out the word "substantial".

The Witness: I don't even know what the question is now.

Trial Examiner Myers: Reframe your question.

Q. (By Mr. Jennings): On the past occasions when this matter was discussed between the C. P. & G. and the Union, Mr. Tomson, did Mr. St. Sure take the same position as he stated this morning?

Mr. Tobriner: A further objection. I think that if we go over the whole history of some years of negotiations and ask a question like that, it is impossible to answer it. I think the only way to do so would be through the production of the records. All the Adjustment Committee material is in writing. I ask that the Board attorney produce what he is relying on.

Trial Examiner Myers: Overrule the objection.

(Testimony of R. M. Tomson.)

A. Yes, the position has been similar, except that I do not remember, unless he states it again.

Q. Would you state, to the best of your recollection, now, in substance, what Mr. St. Sure's position was on behalf of the C. P. & G. in the past with regard to whether or not the contract required the discharge of people who did not maintain their membership in good standing?

Mr. St. Sure: If the Trial Examiner please, largely in the interests of shortening the proceeding and avoiding taking the stand myself, it seems to me the witness has testified, in answer to direct examination, that the position is consistent with what I stated this morning. Why restate it and get into possible conflict?

Trial Examiner Myers: That is right. Was your statement ever reduced to writing?

Mr. St. Sure: There is a letter that the Board introduced. I do not recall any others. There may have been other documents.

Trial Examiner Myers: What written documents did you refer to, Mr. Tobriner?

Mr. Tobriner: The minutes of the Adjustment Board, which are all compiled.

Trial Examiner Myers: Have you got it?

Mr. Tobriner: I do not have it here.

Mr. St. Sure: I can produce them. I would say that if produced, to my memory, there is no reference to this subject. But, I merely ask, in the event Mr. Tomson is allowed to testify about the official records of the Adjustment Board, I would

(Testimony of R. M. Tomson.)

rather have the records produced, without his memory.

Mr. Jennings: I might say, Mr. Examiner, that I thought I had access to a complete copy of the Adjustment Board records. I went through them and could not find any discussion of this matter in them. I may not have had all of them, but I was not able to find them.

Trial Examiner Myers: All right. I will sustain the objection to the last question.

Q. (By Mr. Jennings): What was the union's understanding, Mr. Tomson, as to the nature of its contract? Did the contract require the employer to discharge employees who failed to maintain membership in good standing in the union?

Mr. Tobiner: Objected to on the ground that his understanding or somebody else's understanding would not vary the written document, in any event. That is, his understanding would not.

Mr. Jennings: Certainly it is relevant, Mr. Examiner.

Trial Examiner Myers: Sustain the objection.

Mr. Jennings: The parties to the contract are entitled to state what their understanding of their agreement was. [144]

Trial Examiner Myers: Reframe the question.

Q. (By Mr. Jennings): What was the union's interpretation of its contract, Mr. Tomson, insofar as the preferential hiring provision of the contract is concerned? What did the contract require the employer to do? A. It required——

(Testimony of R. M. Tomson.)

Mr. Tobriner: Just a second. Objected to on the ground the contract shows that itself.

Trial Examiner Myers: Overruled.

A. ———required new employees to obtain a hire card from the Local Union, in order to go to work. It required old employees to obtain a clearance card from the Union, and these two different kinds of cards were to be picked up by Management from those who had them. That is what it reads in the agreement.

Q. Did the union interpret the contract as requiring the employer to discharge employees who failed to maintain their membership in good standing after they were once cleared?

Mr. Tobriner: Objected to on the ground that this man cannot speak for the union, nor what the union's understanding of its position was.

Trial Examiner Myers: Overruled.

Mr. Tobriner: I also object on the ground it does not say when or where.

Trial Examiner Myers: He is talking about any time during the life of the contract.

The Witness: I was the Manager of the union at that time, and I should be able to speak for it at that time.

Trial Examiner Myers: Answer the question. Do you want the question read to you?

The Witness: No. I believe I remember it.

A. The position of the union varied. In some instances we interpreted—the union interpreted it to mean that it was a closed shop agreement. In

(Testimony of R. M. Tomson.)

some cases we did not. However, Management, through the California Processors & Growers, always took the position that it was not a closed shop, and they so advised their operators that they represented.

Mr. St. Sure: I would ask that that latter portion be stricken. Certainly Mr. Tomson, unless he has been reading our mail, is not qualified to pass upon matters of that kind.

Trial Examiner Myers: Strike out the whole answer. Read the question.

Mr. Jennings: Mr. Examiner, the entire answer should not be stricken.

Trial Examiner Myers: I cannot separate one part from another.

Mr. Jennings: Read the question, Miss Reporter.

(The question was read.)

Mr. Edises: I wonder if we could have his former answer read back? I think the Examiner was correct in part of his ruling. [146]

Trial Examiner Myers: Just tell us about this. Sometimes Yes and sometimes No does not tell us about what position the association took.

A. The union, if they thought they could get away with it, insisted that it was a closed shop provision. Naturally a union interprets the——

Trial Examiner Myers: Never mind any more now, please.

Q. Did any representative of the C. P. & G. ever agree with you that the contract was a closed shop contract?

(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to on the ground that any representative of the C. P. & G. over a period of years might include many persons who could be assumed to be representatives of the C. P. & G. That is a blanket, broad question. Let the attorney break it down if he wants to ask that question.

Trial Examiner Myers: Overruled.

A. No, they have not.

Q. I would like to ask you again, Mr. Tomson, what position the C. P. & G. consistently took with regard to this contract?

Mr. St. Sure: Mr. Trial Examiner——

Trial Examiner Myers: I will allow this one question. Let it go.

A. That it was a preferential hiring clause, and not a closed shop agreement.

Cross-Examination

By Mr. St. Sure:

Q. Mr. Tomson, despite the position of the C. P. & G. that you have outlined, you, as Manager of the Local Union 22382, took the position, did you not, that in your territory the contract was going to be a closed shop contract, regardless of the C. P. & G. position, didn't you?

A. Sometimes that position was taken.

Q. Did you ever take any other position in discussions with me in connection with the operation in your territory in connection with C. P. & G. plants?

A. Sometimes we just did not discuss it with

(Testimony of R. M. Tomson.)

you. We did not do anything about it at all, because we knew what your answer would be.

Q. But when you did discuss it, you took that position, that it was a closed shop agreement, so far as you were concerned.

A. We tried to get you to say it was.

Q. Will you answer my question, sir?

A. We tried to get you to say.

Q. In trying to get me to say that, you asserted, from your point of view, that that was the way the contract was administered in your territory, isn't that correct?

A. If we could get you to agree on it.

Q. Just answer my question, Mr. Tomson. Did you not assert in discussions with me that so far as your union was concerned, that you were going to administer the contract as a closed shop contract? A. Not exactly, no. [148]

Q. Very well. Mr. Tomson, do you recall testifying before a Panel of the War Labor Board in a dispute case in 1944, at which time the Cannery Council was endeavoring to secure a check-off provision in the contract, and that was a matter of dispute before the War Labor Board?

A. Yes, I attended that.

Q. Do you recall at that time——

Mr. St. Sure: I do not have the transcript here, Mr. Trial Examiner, for the purpose of refreshing the witness' recollection, so I would like to ask these questions.

(Testimony of R. M. Tomson.)

Q. (By Mr. St. Sure): Do you recall testifying at that time, insofar as the Modesto Local was concerned, the one of which you were the Business Manager, that you operated on a closed shop basis with a check-off in all plants in this area?

A. No, I do not recall saying that.

Q. Was that the fact or was it not the fact, Mr. Tomson? A. No, it was not the fact.

Q. In how many plants did you have a check-off agreement of dues and compulsory membership?

A. At what time was that?

Q. In 1944, 1945, up to the time that you left the union. A. Practically all of them.

Q. Practically all of them, including the Hume plant? A. Yes. [149]

Q. You required that dues be collected from the members of your union in order for them to remain on the job in the Hume plant, did you not?

A. Dues were collected through a check-off at the Hume cannery.

Q. You required that by agreement with the management, is that correct?

A. It is stipulated the check-off agreement—

Trial Examiner Myers: Did you require it?

Q. (By Mr. St. Sure): Did you require that when you were the Business Manager of this union?

A. Well now, you are not going to make me say something that did not happen. There were times down there when they did not pay their dues.

Q. What did you do in those times?

(Testimony of R. M. Tomson.)

A. We could not do anything about it. We took the case up before the Adjustment Board, and you ruled against it.

Q. I will ask if you can name a single case when that occurred, Mr. Tomson, a single individual or single occasions?

A. There were two or three occasions. I do not remember the individuals' names, but it was before the Adjustment Board in the Hume Cannery.

Q. In the Hume cannery? A. Yes.

Q. When was that, according to your recollection? [150]

A. I think it was about 1944, I would say, some time in '44, during the canning season.

Q. It is your contention that there was an official complaint filed by you or by your local union in connection with the non-payment of dues of employees in the Hume Canning Company?

A. I don't know whether it was written or verbal, but there were two or three cases up there.

Q. Mr. Tomson, you remember the Adjustment Board. Don't you recall and don't you know that the Adjustment Board procedure required that any matter that came before the Board had to be filed in writing before the Board?

A. Yes, but there were matters before the Board that were not in writing, too.

Mr. St. Sure: I submit that the contract speaks for itself, Mr. Trial Examiner, as well as the Board procedures, if we want to go into it.

Q. (By Mr. St. Sure): Is it not a fact, Mr.

(Testimony of R. M. Tomson.)

Tomson, that you obtained from the Hume Canning Company a signed agreement whereby the company management agreed to check off the dues on a compulsory basis of all employees of the Hume plant?

A. Yes.

Q. When did you first secure that agreement?

A. I think it was 1944. I am not certain now.

Q. Did you continue to observe and enforce that agreement from the point of view of your union, up to the time that you left the union as an officer?

Mr. Edises: Mr. Examiner, I want to interpose an objection at this point. There has been reference to some agreement about dues collection and check-off, and that has been characterized in the course of this colloquy as requiring compulsory check-off by all employees. I submit that the agreement there is likewise the best evidence. I want to show on the record that it is not our contention or our position that it does require compulsory dues payments by all employees.

Trial Examiner Myers: Overruled.

Will the Reporter read the question?

(The question was read.)

A. Yes, we did that.

Q. And you obtained similar agreements from other canneries in the Modesto area, did you not, both members of the C. P. & G. and non-member plants of the C. P. & G.?

A. Yes.

Q. Going back to this matter of your testimony before the War Labor Board, do you not recall,

(Testimony of R. M. Tomson.)

Mr. Tomson, that you testified at that time, before the Panel, at least, the dispute Panel, that the practice of the Modesto area in connection with your Local union, the plants with which you had contracts, was to require good standing under a check-off of dues? [152]

A. I probably did. We had check-offs, I think, in most plants then.

Q. Then you would say, according to your recollection, that would be the testimony you would give or did give before the Board in 1944, is that correct?

A. We required the payment of dues to remain in good standing, is that your question?

Q. Yes. You required that employees remain in good standing, and that they pay their dues in order to remain on the job?

A. Well, the union required that, yes.

Q. Pardon me?

A. I say, the union required that.

Q. Is it not a fact, Mr. Tomson, that you used to make the statement that, regardless of how the contract was administered in other territories, that so far as the Modesto territory was concerned, it was a union shop or closed shop agreement?

A. No.

Q. You never made that statement?

A. I don't ever remember making it.

Q. Do you recall ever saying anything in substance of that kind?

(Testimony of R. M. Tomson.)

A. I don't recall making that statement. The check-offs and the agreement spoke for itself, and I don't know what you are leading up to in me making those statements.

Q. I am not leading up to anything. I just asked if you made such statements.

A. I do not recall such statements.

Trial Examiner Myers: What is the point? Who is saying that it is not a closed shop? Who is contending that it is not a closed shop contract, the union?

Mr. Jennings: Yes.

Trial Examiner Myers: And you, Mr. Tobriner?

Mr. Tobriner: We insist it is a closed shop.

Trial Examiner Myers: You, Mr. St. Sure, say it is not a closed shop, is that it?

Mr. St. Sure: As I have said, and I repeat it, so far as the literal contract itself in its written form is concerned, it is not quite expressly closed shop, but our position in the area, particularly in this area, both the practice and the additional agreements that were executed, may as well constitute a closed shop, and it has been so administered during the period that is in question. I assume it likewise would be considered by the National Labor Relations Board. We must not forget that, as we go along, in characterizing what kind of a contract we have.

Trial Examiner Myers: Go ahead.

Mr. St. Sure: I have no other questions.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Tomson, you were business Manager of this union and administered its contracts, and so forth, is that right? [154]

Q. Do you remember at one time Mr. Brown was suspended by the local?

A. That is right.

Q. Did you not take the position that upon that suspension he must be discharged from his job?

A. I think the union wrote the company a letter and advised them that he had been expelled from the union.

Q. Who wrote the letter? A. The union.

Q. Who signed it?

A. I think the President of the union.

Q. Who was the President?

A. Mr. Burroughs.

Q. You knew about the letter?

A. Yes. I probably signed it, too.

Q. You signed it, too, and sent it to a member of the C. P. & G.? A. Yes.

Q. You did not say at that time that there was not a closed shop contract, did you?

A. No. We advised the management that the man had been expelled from the union, and was no longer a member in good standing.

Q. You mentioned that you had a case with Hume where you went down there and asked for certain individuals to be separated from Hume. You mentioned that just a few minutes ago, didn't you?

(Testimony of R. M. Tomson.)

A. That they pay up and become in good standing with the union.

Q. You tell me that case went up to the Adjustment Board, is that right?

A. On two or three occasions. They were new employees, however.

Q. Did you argue that case before the Adjustment Board?

A. I don't know whether it came up officially before the Board, or whether it was just talked over with Mr. St. Sure. I am not sure now.

Q. In either event, did you tell Mr. St. Sure that you did not have a union shop contract or closed shop contract?

A. I know we did not.

Q. You bet you didn't.

A. I say, I know we did not have a closed shop contract.

Q. I am asking what you told Mr. St. Sure. Would you answer my question?

A. I told him that there were employees at the G. W. Hume Company that were working there who were not members of the Union, and that we wanted them to become members of the Union, and they were in there working, not members. [156]

Q. You told him that. Didn't you say that under the contract they were not supposed to work, they not being members of the union?

A. No.

Q. You did not say that?

A. No.

(Testimony of R. M. Tomson.)

Q. Why did you take the case up to the Adjustment Board?

A. To see if Mr. St. Sure could do anything for us on it.

Q. So you took the position, as the Business Manager of the union, although you were required, under the constitution and by-laws of the union, to protect its rights, you went up there and did not say to Mr. St. Sure that you had a union shop contract?

Mr. Edises: Objected to as argumentative.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Tobriner): You contend that you never said to Mr. St. Sure that you had a union shop contract?

A. Why should I say that to Mr. St. Sure? We argued every year trying to get one on negotiations, and could not get it. So, why come back and tell him that we had one, when we knew we did not?

Q. But you tried to get people discharged, and did get people discharged under that contract, did you not?

A. I tried to.

Q. And you did, didn't you?

A. No, I don't remember doing it.

Q. You just told me you got Mr. Brown discharged.

A. I said we wrote a letter to the company, notifying the company that he had been expelled from the union.

Q. And he was discharged?

(Testimony of R. M. Tomson.)

A. I don't know whether he was discharged or not.

Q. You don't know? A. No, I don't.

Q. In your work now as a labor relations advisor, is that for unions or for employers?

A. Employers.

Mr. Tobriner: Thank you. That is all.

Trial Examiner Myers: Any redirect examination?

Redirect Examination

By Mr. Jennings:

Q. Mr. Tomson, you said that you tried to negotiate a full closed shop contract, is that it?

A. Yes.

Q. You tried to secure by negotiations a full closed shop? A. Every year.

Q. Did you ever reach any agreement on a full closed shop?

A. The best we got is what we had there, a preferential hiring clause.

Q. What did you ask for in the way of a full closed shop? What did you want the contract to provide? [158]

A. We asked for a closed shop and hiring hall. We have asked for absolutely closed shop, and I think on two different occasions we have asked for a hiring hall.

Q. Did you ask that employees be required to maintain membership in good standing in the union?

A. Yes, and not be allowed to work there if they did not. That is a closed shop agreement.

(Testimony of R. M. Tomson.)

Q. There has been reference to the collection of dues under this dues check-off contract, Mr. Tomson. How was that handled?

A. The employers sent a list to the union office of the names of the employees working for them. That list came in about—it came in once a month to the union office. Then the union would check the list against their files and enter the amount that was due the union for dues and initiation fees for each of the employees appearing on that list, and send it back to the company, and the company made deductions from their payroll, and in turn sent a check to the union for the amount of deductions.

Q. I am not certain that the record is clear. You said that you had some discussion with regard to some employees at the Hume plant some time in 1944, I think you said, during the operating season?

A. Yes, in regards to new employees.

Q. As a result of those discussions or conferences with C. P. & G., were any employees fired?

A. No.

Mr. Jennings: That is all.

Recross-Examination

By Mr. Edises:

Q. Mr. Tomson, in the course of your testimony you referred to an agreement for the dues collection and check-off that was made with the Hume Company, I believe some time during the year 1944?

A. Yes.

(Testimony of R. M. Tomson.)

Q. I ask you if the document which is in existence as Board's Exhibit 7 is the agreement that you referred to?

A. It looks like it. However, I have not read it all. I don't know if it is the exact one or not, but it looks like the one that we signed.

Q. That has been identified in the hearing as the contract which was made in regard to dues collections?

A. Of course, now, I do not say that this is the exact one. I do not know. I have not read it.

Q. I would like to ask you whether there was any other agreement of any kind, any other written agreement in addition to or supplementary to this contract in regard to dues collections or check-off.

Trial Examiner Myers: With Hume?

Mr. Edises: With Hume, yes.

A. I am trying to think. I don't remember. There was something there that—I don't know whether it was an agreement [160] or just verbal, between Mr. Hume and myself. Something about the time of the month that the money was to be paid to the union, that was deducted. I do not recall whether it was written or verbal, or what it was.

Q. But, other than that, there was no agreement or understanding?

A. Not that I recall.

Mr. Edises: That is all.

Q. (By Mr. St. Sure): Mr. Tomson, as I understand your testimony now, you say that there were occasions when you discussed with me the fact that

(Testimony of R. M. Tomson.)

certain employees of the Hume Company were not members of the union, and those were new employees?

A. Yes.

Q. You say that there were none discharged as a result of those discussions. Was that because they joined the union?

A. No. It was because we did not do anything about it further, after we talked to you.

Q. Mr. Tomson, do you contend that the contract does not require that new employees join the union, by its express terms?

A. I thought at that time that they should join the union, yes.

Q. And the contract required that if the new employees did not join the union, you had a right to ask that those employees be discharged, under the express terms of the contract, did you [161] not?

A. I thought I had that right, yes.

Q. You did not assert it on that occasion? You were nice about it, and did nothing about it, is that correct?

A. I did something about it.

Q. What did you do about it?

A. I took it before the Adjustment Board, and I took it before you, and I took it before Mr. Hume, and I took it before the steward in the cannery down there. We did a lot of things about it.

Q. What happened?

A. Nothing happened.

(Testimony of R. M. Tomson.)

Q. The Adjustment Board had such a matter before it as interpreting the contract as to new employees, and nothing happened, is that your recollection? A. Yes.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mr. Tomson, did you not tell me that you argued that you did not have that kind of a contract, to require discharge?

A. He is talking about new employees, and you are referring to employees. There are two different things. There is a new employee and an old employee.

Q. I am talking about the Hume case.

A. That is right. [162]

Trial Examiner Myers: He said "new employees".

Q. (By Mr. Tobriner): In the Hume case, do you want the record to show that you argued to Mr. St. Sure that the contract did not cover them and did not require them to be members of the union?

A. What I was after—we required, (which the contract requires) that they obtain a hire card for new employees, and a clearance slip for old employees.

Q. Did you argue that to Mr. St. Sure?

A. Yes. No, I argued that—the point I argued to Mr. St. Sure was that we got the hire slip from the new employees, but they did not join the union.

Q. And you did not require the employer to see that they joined the union? You did not take any action?

(Testimony of R. M. Tomson.)

Trial Examiner Myers: He said what action he took.

Q. The contract provides further action, does it not, than what you said?

A. Yes. The contract provides that the rest of the employees can refuse to work, and all that, and—I am not sure on this case. Probably they have the records. It may be that the union may have written a letter on it, saying that they would take action, in refusing to work with the new employees, if they did not. I do not recall. It may be in the letter in the records over there. I do not have access to the records.

Trial Examiner Myers: Do you want to answer that? [163]

Mr. Jennings: Could we take a 5-minute adjournment, Mr. Examiner?

Trial Examiner Myers: Very well.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: All right. Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Tomson, at any time when you were present at the Adjustment Board, did anyone on behalf of the union ever contend that the contract was a union shop contract? Yes or no, please, and will you explain your answer?

A. Yes, and to explain——

(Testimony of R. M. Tomson.)

Mr. Tobriner: Mr. Trial Examiner, I am going to ask the witness to answer Yes or No and then explain it, if he wants to.

A. (continuing) I do not recall that as having been officially said before the Adjustment Board.

Q. I did not say "officially".

Trial Examiner Myers: What was the question, again? Will you read the question?

(The question was read.)

A. You mean a closed shop or a union shop?

Q. A closed shop. [164]

Trial Examiner Myers: Which do you mean?

Q. Union or closed shop?

A. No. Now I will explain my answer, which you said I could.

We all understood—the members of the Adjustment Board were also members of the Negotiating Committee, and everyone on the Adjustment Board representing the unions understood what the contract was, because we had participated in negotiation. We understood how the clearance cards and hire cards went. We understood about the notification of the Board before any trouble began, before the employees were pulled out from working with non-union employees, and we knew it was a preferential hiring clause. So therefore, I do not recall of anyone on that Adjustment Board ever saying it was a closed shop or a union shop agreement.

Q. Did anyone at any time at any meeting of the Adjustment Board on behalf of the union contend that the contract required the persons who

(Testimony of R. M. Tomson.)

were not members of the union and not paying union dues to be discharged?

A. I do not recall that.

Q. You do not recall? A. No.

Q. Did you or anyone on behalf of 22382 at any time ever contend with an employer that the contract required employees who were not members of the union to be discharged? [165]

A. We notified them as to the section in the agreement that says non-union employees could refuse to work—or, union employees could refuse to work with non-union employees, and threatened them in that way.

Q. You did do that?

A. Yes. We have written letters to that effect, but we did not say it was a closed shop agreement.

Q. But you did require them to discharge persons who were not members of the union?

A. We notified them that we might cause action to be taken in the plant for union members to refuse to work with the non-union members.

Q. And you did take such action?

A. That action has been taken, yes.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any other questions?

Mr. St. Sure: I have one or two I would like to ask.

Q. (By Mr. St. Sure): Mr. Tomson, in connection with this matter of new employees, you recall, do you not, the provisions of the contract which requires that if non-union employees were

(Testimony of R. M. Tomson.)

hired, that such a person would be required to file an application for membership in the local union before being put to work? A. Yes.

Q. Do you recall likewise that the contract [166] required that upon filing of such application, such person would receive from the union a written statement that he had made such application?

A. Yes.

Q. That statement would be taken up by the employer and returned to the union when the applicant was put to work, do you recall that?

A. Yes.

Q. Do you recall that the contract likewise required that such person must become a member of the local union within ten days after his employment, is that correct?

A. Well, yes, but then there was another section in there that said they did not have to. They could pay 50c a week.

Q. What was that?

A. They could pay 50c a week, and did not have to become members.

Q. You are talking about so-called "emergency employees" under temporary agreement during the war period, are you not? A. Yes.

Q. As to those employees, a specific contract was signed to the effect that the employer would require those people to pay 50c a week as the condition of employment? A. That is right.

Q. That is correct, is it not? [167]

A. It is.

(Testimony of R. M. Tomson.)

Q. In connection with employees newly hired, is it not a fact, Mr. Tomson, that you on occasions visited the plants of members of the C. P. & G. and told the employers to discharge workers who had failed to complete their affiliation with the union?

A. Well, we might have asked them to. We might have even threatened them with causing a work stoppage if they did not.

Q. And you felt that was a matter of your right under the union contract, did you not?

A. It was a matter of right under the contract for the union members to refuse to work with non-union members.

Q. I am talking about new employees for the moment, Mr. Tomson. Did you not consider it your right under this contract that I have just referred to, to require the employer to discharge any new employee who failed to complete his affiliation with your union?

A. The contract does not say that. The contract says they will make application for membership in the union, and the contract says they will obtain hire cards, but it does not say that they must become members of the union.

Trial Examiner Myers: Did you ever tell the employer that he had to fire a new employee because he did not join the union within the 10-day period? Did you ever say that to any employer or to anybody representing the association? [168]

The Witness: Yes, we probably may have. I do not recall a specific case.

(Testimony of R. M. Tomson.)

Mr. St. Sure: Would you read back the last answer before the Trial Examiner asked his question, please?

Trial Examiner Myers: You mean the answer or the question?

Mr. St. Sure: Did you answer this last question?

The Witness: I did answer.

Trial Examiner Myers: Go ahead and read it, please.

(The answer referred to was read.)

Q. (By Mr. St. Sure): I will now ask you to read, Mr. Tomson, the sentence that I am making on the margin of page 3 of the contract, Section 3 (a) of the contract. Just the last sentence. Read it aloud, please.

A. "It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member."

Q. Thank you. Does that refresh your recollection, Mr. Tomson, as to whether or not the contract did require that they must become members of the union within ten days?

A. Well, I remember that section.

Q. You do. Then what did you mean a moment ago when you said the contract did not say that?

A. I did not say the contract did not say [169] that.

Q. Very well. We will let the record stand.

(Testimony of R. M. Tomson.)

Another question, Mr. Tomson, if you please.

Do you not recall, in connection with Mr. Brown, who was an employee of the Turlock Cooperative Cannery, that not only did you send a letter to the management, or your union sent a letter, with your approval, demanding that Mr. Brown be discharged, but that you personally went to the plant and demanded that he be discharged or you would pull all the workers out of the plant? A. Yes.

Q. You did do that? A. Yes.

Q. Do you recall an employee of the Hume Canning Company named Perez, whom you required to be discharged about the 15th of July of 1944 for failure to join the union? A. No.

Q. You do not recall that? A. No.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mr. Tomson, in your capacity——

Mr. Edises: Mr. Examiner, I wonder if I might have an opportunity occasionally to ask a question?

Trial Examiner Myers: Go ahead.

Q. (By Mr. Edises): Mr. Tomson, Section 3(a) of the contract provides: [170]

“It is recognized that the refusal of the Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.”

(Testimony of R. M. Tomson.)

Was it your understanding and the understanding of your union that that was the only instrument provided in the contract for enforcing a requirement of membership in your union?

Mr. Tobriner: Objected to on the ground that we are not interested in his understanding.

Trial Examiner Myers: Let us not go into that. I will sustain the objection. Reframe the question.

Mr. Edises: I think my purpose will be sufficiently established, Mr. Examiner, if I merely call the attention of the Trial Examiner to that section of the contract.

Trial Examiner Myers: Very well.

Mr. Edises: And also to the section——

Trial Examiner Myers: What section is it?

Mr. Edises: That is Section 3 (a) on page 2 of the contract.

Mr. Jennings: May we take a short recess now? It is connected with this same matter.

Trial Examiner Myers: Very well. We will take a short [171] recess.

(Whereupon a short recess was taken, after which proceedings were resumed as follows.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Mr. Tomson, will you resume the stand, please?

(Testimony of R. M. Tomson.)

Has anyone any further questions to ask Mr. Tomson?

Mr. Agee: No questions.

Mr. Edises: No questions.

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, Mr. Tomson. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: Mrs. Waite.

RUTH WAITE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Ruth Waite.

Trial Examiner Myers: Will you please spell your last name [172] for the record?

The Witness: W-a-i-t-e.

Trial Examiner Myers: Is it Mrs. or Miss?

The Witness: Mrs.

Trial Examiner Myers: Where do you live?

The Witness: 575 Mitchell, Turlock.

(Testimony of Ruth Waite.)

Trial Examiner Myers: You may be seated, Mrs. Waite. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Did you state your name, Mrs. Waite?

Trial Examiner Myers: We have the name.

Q. Where are you employed?

A. Hume Cannery, Turlock.

Q. How long have you been employed there?

A. Starting my 11th year.

Q. Are you a regular worker or a seasonal worker?

A. Seasonal.

Q. When did you come to work in 1945?

A. In 1945?

Trial Examiner Myers: Last year.

Q. Last year.

A. Well, we worked in spinach. I don't just recall when we started.

Q. That was in the spring of 1945?

A. Yes.

Q. Did you secure a clearance when you went to work in [173] spinach?

A. No, I don't think I did in spinach.

Q. How long did spinach last? About a month or so?

A. I think so.

Q. What was the next crop you worked in?

A. Well, we worked in apricots; then we worked in peaches. We did not work in apricots.

Q. Before you went to work in apricots—

A. We did not.

Q. Not in 1945?

A. That is right.

(Testimony of Ruth Waite.)

Q. And you went to work in peaches in 1945?

A. Yes.

Q. Before you went to work in peaches, you had to sign a clearance before you went to work?

A. Yes.

Q. Did you sign a clearance?

A. Yes, I signed a clearance.

Q. When you came to the plant to work, did you try to walk right in without a clearance?

A. Yes.

Q. What happened?

A. We were told we had to obtain a clearance before we could work, in the cabin over across the street.

Q. Who told you that? [174]

A. Mr. Fordham.

Trial Examiner Myers: Mr. Who?

The Witness: Fordham.

Q. (By Mr. Jennings): Was this cabin across the street you refer to on company property?

A. Yes. It is right by the payroll office, across the street.

Q. What did you do then? Did you go across the street?

A. Yes. We all lined up, and went in line, about two abreast, I think it was.

Q. What did you do?

A. We went in, and each one had to sign a clearance. We didn't any of us want to, but they said we had to before we could work.

(Testimony of Ruth Waite.)

Q. Did you have to sign anything else besides a clearance?

A. Yes; a dues deduction slip.

Trial Examiner Myers: About how many people went with you?

The Witness: Well, I was—there was a lot of them behind me. I don't know how many. You know, we were all in line.

Trial Examiner Myers: About how many?

The Witness: I imagine 200.

Trial Examiner: All employees of Hume?

The Witness: Yes.

Q. (By Mr. Jennings): Was there any representative of the company there while you were signing?

A. I don't recall.

Q. Did you sign the clearance and the dues check-off?

A. Yes.

Q. Did you have any discussion with the man who had you sign it, about whether or not you had to?

A. Yes. I said, "Do I have to sign?" and he said, "Yes, you do, before you can work."

Q. Then you signed it?

A. I signed it.

Q. After you had signed the dues check-off, did it continue in effect, or did you cancel it?

A. No. I signed the revocation slip.

Q. How long after?

A. I think the next day. I am not sure. But, it was right away.

Q. At or about that time did you sign a pledge card for FTA-CIO?

(Testimony of Ruth Waite.)

A. Well, it was later than that, I think around the latter part of August I signed that.

Q. Did you continue to work during the balance of the peach season? A. Yes.

Trial Examiner Myers: How long did the season last?

The Witness: Well, we worked all of August, and I think until about the 16th or 17th of September. [176]

Q. (By Mr. Jennings): Did you come to work then in the fall spinach? A. Yes.

Q. About when was that?

A. We started—I think it was around the 7th or 8th of November and we only worked that one day, and then we missed a few days. Then we went back later. I forget. It was about—the 14th, I believe.

Q. When you came to work in the fall spinach, were you required to sign a clearance again?

A. Yes.

Q. Before you came to work or after you had come to work?

A. I think we signed it when we first went to work.

Q. Did you sign another dues slip, does check-off?

A. No; I did not sign one when I first went to work, either.

Trial Examiner Myers: You did not sign what?

(Testimony of Ruth Waite.)

The Witness: No, I did not sign when I first went to work.

Trial Examiner Myers: What?

The Witness: A clearance slip.

Trial Examiner Myers: You did not?

The Witness: No.

Q. (By Mr. Jennings): Did you sign a dues check-off slip when you first went to work in fall spinach?

[Answer not shown.]

Q. After you started to work in fall spinach did anyone tell you that you must?

A. Yes. We were told we must sign with them or we would lose our job and could not work.

Q. About when was that statement made to you?

A. Within a day or two. I think.

Trial Examiner Myers: Was it after you went back on the 14th of November?

The Witness: Yes, I think it was.

Trial Examiner Myers: What did they say, whoever said it?

The Witness: Mr. Fordham come to us and told us we had to go out and clear with the union, and if we did not, we would lose our job.

Trial Examiner Myers: Did he say what union?

The Witness: No, he did not call it by any name. He just said the "union."

Q. (By Mr. Jennings): Did he say anything other than that you had to clear with the union?

A. He said if I did not clear I could not work there any more.

(Testimony of Ruth Waite.)

Q. Did he say what he meant by "clearing with the union?"

A. Well, he just said that if I did not clear with the union it would mean my job. I would be fired. I could not work any more.

Q. But he did not tell you what he meant by clearing with the union? [178]

A. Well, he meant I had to pay my back dues.

Mr. St. Sure: I will ask that that be stricken, as to what he meant. The witness is not a mind-reader.

Trial Examiner Myers: Strike that.

Did he tell you what he meant by "clearing with the union?" Did anybody ask him what he meant by "clearing with the union?"

The Witness: I did not ask him what he meant by it, but I knew what he meant.

Trial Examiner Myers: All right. We just asked you what Mr. Fordham said.

Q. (By Mr. Jennings): What did you understand him to mean?

Mr. St. Sure: Object to that as calling for the conclusion and opinion of the witness.

Trial Examiner Myers: Sustain the objection.

Q. (By Mr. Jennings): What did you do as a result of Mr. Fordham's statement?

A. Well, I went out and argued with the union men a while.

Q. Where were the union men?

A. They were out on the porch, in that little booth they have there.

(Testimony of Ruth Waite.)

Q. That was inside the plant gates?

A. Yes, it was inside the gates, on the porch. And, I told them I did not want to sign it and, well, he said I had to sign or else get out, and Mr. Fordham was there, and he says, "This is it. Either sign or you are fired. You can't work here any more if you don't sign."

Well, finally I said I would like to think it over. I did not want to sign then. And so, he said, "Well, you can think it over a while. You go home and sleep over it, and think it over a while." So, I did that. I did not sign that day.

Q. Did you sign later?

A. No, I never did sign.

Trial Examiner Myers: You spoke to some union man, you say?

The Witness: Yes. I talked to Brown and Evans, I believe it was.

Trial Examiner Myers: Brown and whom?

The Witness: Mr. Evans.

Trial Examiner Myers: Do you know what union they represented?

The Witness: They said they represented Local 22382, but I did not think—I thought it was the Teamsters, and I did not want to join the Teamsters, so, because I knew they were affiliated with the Teamsters, I did not sign.

Q. (By Mr. Jennings): As I understood your statement, Mrs. Waite, you did not then sign a new clearance?

A. No.

(Testimony of Ruth Waite.)

Q. And you did not sign any new authorizations?

A. Not that day.

Q. Did you the following day or the day after that?

A. Well, I think it was a day or two after that—it wasn't more than one or two days after that, we were working, when Mr. Fordham come to us again and said we was to go out and sign, so I went out and signed that day, but the next day I signed a revocation slip.

Q. But you did secure a new clearance?

A. Yes.

Q. And you signed a new clearance?

A. Yes.

Q. And you signed a new dues deductions?

A. Yes.

Q. Then you revoked it the following day?

A. Yes.

Q. How many of you were in the group that Mr. Fordham spoke to when you said that you would?

A. Oh, there was three or four or five of us around there, I know, three or four girls I knew, but I don't remember any of the others.

Trial Examiner Myers: On each of the three occasions?

The Witness: No, just the first time.

Trial Examiner Myers: How many were there when he spoke to you when you were speaking to Brown?

The Witness: You mean, the first time when we

(Testimony of Ruth Waite.)

went out? Oh, there was three or four of us girls that I knew there. [181]

Trial Examiner Myers: Were there any other employees present when Mr. Fordham spoke to you the second time after you came back after thinking it over?

The Witness: Well, I was working with the other girls there, where I was working. They heard him come and tell me, I think. That was just one or two of us that was paddling spinach.

Q. (By Mr. Jennings): On the 20th of November, which was a Tuesday, did you come to work?

A. Yes, I did.

Q. Did you go in to work?

A. No, I did not.

Q. What happened?

A. There was a picket line, and nobody went in. They wouldn't let nobody in on the 20th?

Q. On the 21st of November, did you go in?

A. Yes. I reported for work, and we went in on the 21st.

Q. Did you go through the picket line?

A. I did.

Q. Did you get inside the plant? A. Yes.

Q. Did you see any company official inside the plant?

A. Yes. I went in and saw my boss, and he said——

Q. Who was he? A. Mr. Gallardo.

Q. The Assistant Superintendent?

A. Yes. And he said he did not think I could

(Testimony of Ruth Waite.)

work until I cleared with the union, and I had better see the higher up. I guess he meant Mr. Fordham. So, when I went back out, there was a group of them around there, and Mr. Fordham was talking to all of them. He says, "This means all of you get out. You are fired." So, I suppose that meant me, too, and we all had to go out.

Q. What was Mr. Fordham talking about when you came there? Did you hear his statement?

A. I just heard him say that we were fired, and of course, I knew what it was for; we would not pay dues to the union.

Q. Did you leave then? A. Yes, we did.

Q. Did you work the balance of that spinach season? A. No, I did not.

Q. Were you called to work when spinach started this year?

A. I wasn't what you would say "called," but I went down and I was put on, put on work. I was there.

Q. You are working now? A. Yes.

Q. Did you sign a clearance this year?

A. You mean, since I started? [183]

Q. Before you went to work? A. No.

Trial Examiner Myers: When did you go back to work this year?

The Witness: 25th of March.

Q. (By Mr. Jennings): Have you been approached since you have come back this year, Mrs. Waite? A. Yes, I was at one time.

Q. By whom?

(Testimony of Ruth Waite.)

A. Well, Mr. King was one, and then another fellow I didn't know.

Q. Mr. King, an official of the Teamsters Union?

A. Yes. And I refused to sign.

Q. Was that while you were working?

A. That is while I was working down there.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. St. Sure, any cross-examination?

Mr. St. Sure: Yes.

Cross-Examination

By Mr. St. Sure:

Q. Did you have any other employment during the period from the 21st of November until your return to the Hume Company in March of this year?

A. No.

Q. Ordinarily do you work just during the canning operation? You are not employed other times?

A. No.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mrs. Wait, Mr. King, when he talked to you, did not say that he was a Teamster official, did he?

A. Well, no, I don't believe he did.

Q. You know that he is an official of 22382?

A. Yes, I know that. I knew that was affiliated with the Teamsters, too.

Q. You did not know that 22382 was affiliated with the Teamsters?

A. Yes, because there is a big sheet down there

(Testimony of Ruth Waite.)

nailed up in the cannery, for everybody to read, that Mr. Flanigan sent, for our union to affiliate with the Teamsters immediately.

Q. But 22382 never did affiliate with the Teamsters, did it?

A. Well, I thought it did, because that sheet said for them to do so.

Q. You did not go to the meetings of 22382 all the time, did you? A. No.

Q. You never were at a meeting of 22382 when they did affiliate with the Teamsters, were you?

A. I have not been to any lately.

Mr. Tobriner: So you don't know. That is all.

Trial Examiner Myers: Any redirect examination? [185]

Redirect Examination

By Mr. Jennings:

Q. When did you see this letter from Mr. Flanigan, Mrs. Waite?

A. It was tacked up on the wall down there at the cannery. I don't know if it is down there now or not.

Q. When did you first see it?

A. I remember seeing it last summer when we were working, some time. I don't know just the day, or when. I saw it, but I don't just remember when it was. It must have been around the peaches time; I don't know.

Q. Do you remember approximately what the letter said?